

**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

LPA No. 353 of 2025

Decided on: 07.07.2025

Union of India & Others

...Appellants

Versus

Shamsher Singh and others

...Respondents

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting?.*

For the appellants: Mr. Balram Sharma, Deputy
Solicitor General of
India[Senior Advocate] with Mr.
Rajiv Sharma, Advocate.

For the respondents: Mr. Rakesh Kumar Bansal,
Advocate.

G.S. Sandhawalia, Chief Justice [Oral]

CMP(M) No. 150 of 2025

Mr. Rakesh Kumar Bansal, Advocate, has put
in appearance on behalf of the respondents. The delay of
57 days in filing the appeal is condoned in view of the
averments made in the application, duly supported by
affidavit of the official.

Appeal be registered.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

The application stands disposed of.

LPA No.353 of 2025

The present Letters Patent Appeal filed by the Union of India is directed against the order passed by the learned Single Judge, whereby, while allowing the Civil Writ Petition No.7052 of 2021, decided on 17.05.2024, the recovery notice dated 16.09.2021, Annexure P-3, was quashed and set aside, qua the petitioners, who were either retired or belonged to Class-III and Class-IV, services (or Group-‘C’ and Group ‘D’ service).

2. Reliance was placed by the learned Single Judge upon the judgment of the Apex Court in the State of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334**, while coming to the conclusion that the project allowance which had been paid to the writ petitioners was not on account of any misrepresentation or fraud and had been made voluntarily by the respondents-present appellants.

3. The objections had been raised by the Controller and Auditor General, on account of fact that the deployment was on a project which fell in R3H2

category and was not admissible in the case of writ petitioners and it was only to be given to the projects established in the area notified and categorized. It was in such circumstances that the learned Single Judge came to the conclusion that the recovery would be impermissible.

4. Counsel for the Union of India has strenuously sought to distinguish the judgment in **Rafiq Masih (supra)**, on the ground that the recovery which was being effected, was not from the earlier point of time but only from the later point of time, for a period of five years at the maximum while referring to the impugned order. It is submitted that the recovery amount pertained to the periods from 28.01.2019 [Sh. Shamsheer Singh, Sr. No.9] from 07.02.2018 [Sh. Santokh Kumar Sr. No. 10] from 07.06.2017 [Sh. Brajesh Kumar Sr. No.13], from 15.02.2017 [Sh. Parashuram Rathod Sr. No.14], from 24.06.2019 [Sh. Kamelesh Kumar, Sr. No.17], from 25.03.2018 [Sh. Manohar Lal Sr. No.21], from 17.08.2016 [Sh. Onkar Chand Sr. No.22], from 18.07.2017 [Sh. Babu Ram Sr. No. 23], from 01.05.2019 [Sh. H.S. Negi Sr. No.27], from 21.03.2017 [Sh. Kuldeep

Singh, Sr. No.28], from 31.07.2016 [Sh. Satpal Singh Sr. No.29], from 13.09.2018 [Sh. Sher Singh Sr. No.31], from 01.04.2018 [Sh. Ram Singh, Sr. No.32], from 24.06.2019 [Sh. Tajinder Kaur Sr. No.33], from 10.07.2019 [Sh. Raj Rani, Sr. No.34], from 01.06.2019 [Sh. Jalam Singh Sr. No.36], from 29.04.2015 [Sh. Hem Raj, Sr. No.38], from 16.10.2016 [Sh. Mansa Ram, Sr. No. 40], from 08.11.2014 [Sh. Mast Ram Rahi, Sr. No.41], from 01.04.2019 [Sh. Rasalu Ram, Sr. No.43], from 01.04.2016 [Sh. Sanjay Kumar, Sr. No.45], from 01.05.2016 [Sh. Prakah Chand, Sr. No.47], from 06.08.2016 [Sh. Sanjay Thakur, Sr. No.50], from 01.04.2017 [Sh. Devendera K Panchal, Sr. No.51] from 18.10.2016 [Sh. Bendi Tejeshwar Rao, Sr. No.52], from 01.05.2017 [Sh. Manjeet Kumar Singh, Sr. No.53], from 28.10.2017 [Sh. Sabyasachi Rakshit, Sr. No.54], from 28.10.2017 [Sh. Raju Ram, Sr. No.55], from 30.12.2019 [Sh. Vuda Pradeep Kumar, Sr. No.56], from 01.05.2017 [Sh. Vishwa Lakra, Sr. No.61], from 22.04.2017 W Dnyandev Sukhadev, Sr. No.62], from 23.05.2018 [Rohit Mankotia, Sr. No.70], from 23.03.2018 [Sh. Sunil, Sr. No.71], from 26.06.2019 [Sh. Lodale

Prakash Sandu, Sr. No.74], from 11.06.2017 [Sh. Shibu Roy, Sr. No. 76], from 14.06.2017 [Sh. Shiba Kumar Meher, Sr. No.79], from 01.06.2017 [Sh. N Rajesh Singh, Sr. No.80], from 18.06.2017 [Sh. Vinay Kumar, Sr. No.81], from 01.04.2018 [Smt. Rachna Devi, Sr. No.82], from 01.09.2018 [Sh. Durgesh Dubey, Sr. No.83], from 23.08.2015 [Sh. Sanoj Kumar, Sr. No.84], from 23.08.2015 [Sh. Raju Kumar, Sr. No.85], from 23.08.2018 [Sh. Manish Kumar, Sr. No.86], from 07.04.2018 [Sh. Randhir Kumar, Sr. No.88], from 07.04.2018 [Sh. Anjan Kumar, Sr. No. 90], from 07.04.2018 [Sh. Raju Yadav, Sr. No.91], from 07.04.2018 [Sh. Arun Kumar, Sr. No. 92], from 04.03.2018 [Sh. Sanjib Ray, Sr. No. 94], from 04.03.2018 [Sh. Vishal Singh Choudhary, Sr. No.95] from 04.03.2018 [Sh. Ramesh Kumar, Sr. No.97], from 04.03.2018 [Sh. Lande D PR. Abhakar, Sr. No.98] and from 21.03.2018 [Sh. Gurbhej Singh, Sr. No.99].

5. Therefore, he tried to argue that the recovery was only being done for three to five years starting point of time from the date of the order which was passed. The said argument, as such, in our considered opinion, does

not hold good keeping in view the principle laid down by the Apex Court. It is to be seen that the specific case, as such, of the writ petitioners was that they were working with the Central Industrial Security Force and had served in the different projects of the State Government, including the CISF Koldam Unit NTPC. The amount of allowances was Rs.1250 per month from 2012 to 2015, Rs.1500/- per month from 2014 to 2017 and Rs.2700/- from 2017 onwards and when the amounts had been paid, there was no fault, on their part and the recovery should not have been initiated and the representation had also been filed to that effect and resultantly, the writ Court had been approached.

6. The stand, as such, of the present appellants, would go on to show that the amount of project allowance was being paid from July, 2012 till 2017, as per sixth pay commission's recommendation and from 2017 to 2021 under 7th pay commission's recommendation. On account of an Audit, as such done for the period from 01.12.2010 to 31.03.2020, the Auditor Team had observed that the Central Government employees shall only be paid project allowance, which

has been covered risk/hardship Matrix, in the area notified as R3H2 as per the rates prescribed.

7. In such circumstances, it was found that the payment from July, 2012 had been wrongly made and it was in such circumstances that the impugned order had been passed. The said order also suffers from the violation of principles of natural justice. Show cause notice, as such was never issued and the employees were never put to notice that the amount would be recovered. In similar cases, we have dismissed the LPA filed by the Union of India, wherein monthly Transport Allowances to the Constable in Central Industrial Security Force was sought to be recovered, on account of the fact that the NTPC had withheld the said amount.

8. Reference can be made to **LPA No. 90 of 2021**, titled **Union of India and Ors. versus Pramod Kumar and another**, with connected matters, decided on 20.06.2025. The principle, as such, for upholding the order of learned Single Judge was laid on the same basis since apparently, as noticed that payments have been made for long duration of time, and in view of judgment **in Rafiq Masih's case (supra)**, that such payment had to

be duly protected, as the recovery would be arbitrary.

Paragraph 13 of the said judgment reads as under:-

“First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir’s case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.”

9. It was also noticed by us that the recovery orders, as such, were passed without even resorting to the principle of natural justice and respondents were

given no opportunity as such and they were not put to notice, was also a ground that the writ Court would step in to protect the persons who had been deployed at the instance of their employer, as such and were not aware of the technicalities as well whether the project allowance was admissible to them or not. It was for the appellants, as such to have kept abreast with the latest instructions and, therefore, in the absence of misrepresentation, the recovery as such by the impugned order has been rightly quashed, since apparently the payment has been made for excess of three to five years and it is also to be noticed that they were Class-III and Class-IV employees or Group 'C' and Group 'D' service, who had served in isolated areas in the State of Himachal Pradesh. The dam, as such has been constructed and thereafter they were protecting the same being part of the Security Force. In such circumstances, it would be highly iniquitous to direct that amount of the recovery be effected and as per the table, some of the persons have been paid a sum of Rs.1,00,000/- and therefore, recovery amount of Rs.10,000/- per month would be a large fraction of the pay being received by them and the amount having been

utilized by them.

10. In such circumstances, it would be impermissible for the appellant, at this belated stage, being a model employer to recover the same.

11. Resultantly, we do not find any plausible reason to interfere in the well reasoned order passed by the learned Single Judge. Accordingly, present appeal is dismissed.

Pending miscellaneous application(s), if any, also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

July, 07 2025
[himani/Shivender]