

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 5612 of 1995 (O&M)

Date of decision : 11.2.2015

Surinder Singh Gehlawat

.. Petitioner

versus

The State of Haryana and another

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Vivek Sharma, Advocate for
Mr. Namit Kumar, Advocate, for the petitioner.

Mr. Kuldeep Tiwari, Additional Advocate General, Haryana.

Rajesh Bindal, J.

The petitioner has approached this Court impugning the order dated 10.3.1995 (Annexure P-8), vide which recovery is sought to be made of the emoluments paid to the petitioner of the higher post after he was reverted to the post of Primary Health Centre Rehabilitation Officer from the post of Psychologist.

Learned counsel for the parties did not dispute the fact that the issue involved in the present petition is squarely covered by judgment of Hon'ble the Supreme Court in State of Punjab and others vs Rafiq Masih (White Washer) and others 2015 (1) RSJ 177. The relevant para of the judgment is extracted below:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III

and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

In view of the aforesaid enunciation of law by Hon'ble the Supreme Court in Rafiq Masih (White Washer)'s case (supra), the impugned order, Annexure P-8, directing recovery of the emoluments paid to the petitioner of the post on which he had been working before he was reverted to the lower post, is set aside. The amount, if any, already recovered be paid to the petitioner.

The writ petition stands disposed of.

11.2.2015
vs

(Rajesh Bindal)
Judge