

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

CWP-4090-1999

Date of decision : 18.03.2015

TARLOCHAN KALSY

...Petitioner

V/S

STATE OF PUNJAB THROUGH SECY. EDUCATION
DEPARTMENT, PUNJAB, CHD AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R. S. Bajaj, Advocate
for the petitioners.

Mr. Mehardeep Singh, DAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction in the nature of certiorari quashing the action of the respondents and for issuance of a writ, order or direction in the nature of Mandamus directing the respondents to continue to release the salary of the petitioner as per the pay scale fixed in her regard of her completing 18 years of service.

Learned State counsel on instructions from Sh. Shashi Garg, Legal Assistant, DPI, Punjab informs that the similar issue has been determined in CWP No.1654 of 1997 which was allowed on 02.09.1997 by this Court as also judgment of Hon'ble Supreme Court of

India titled as *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) Recent Apex Judgments 104.*

In *State of Punjab and others Vs. Rafiq Masih (White Washer) etc.* it has been held as under:-

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

(emphasis is ours) It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs.700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science, the degree of M.Lib. Science being a

preferential qualification). For those Librarians appointed prior to 3.12.1972, the educational qualifications were relaxed. In Sahib Ram Verma's case (supra), a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the concerned appellants were ineligible for the same. The concerned appellants were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

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 above, Annexure P-1 is quashed and the present writ petition is allowed, in the terms of CWP No.1654 of 1997 decided on 02.09.1997 and in the light of Rafiq Masih's case (supra).

18.03.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether referred to reporter= yes/no ?