

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

CWP-12715-2012 (O&M)
Date of decision: 07.05.2015

Partap Singh

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.N. Sharma, Advocate for the petitioner.

Mr. Mohnish Sharma, Advocate for the respondents.

Jitendra Chauhan, J. (Oral)

The petitioner is aggrieved against deduction of Rs.77,789/-, while making the payment of retiral benefits to him vide cheque dated 06.09.2010, i.e. after a lapse of 2 ½ years.

On the last date of hearing, the learned counsel for the respondent was directed to examine the case of the petitioner in the light of the law laid down in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) Recent Apex Judgments 104*. However, he is unable to controvert as to how the case of the petitioner is not covered by Rafiq Masih's case (supra).

The case of the petitioner is that the petitioner had re-exercised his option as per instructions (Annexure P-4) and he was

allowed to re-exercise his option and the said fact was duly entered in his service book, therefore, the deduction could not have been made.

In State of Punjab and others Vs. Rafiq Masih, rendered in *Civil Appeal No. 11527 of 2014*, the Hon'ble Apex Court has held as under:-

“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.

In view of the above, the present petition is allowed, the action of the respondents in deducting Rs.77,789/-, from the retiral dues of the petitioner, being illegal, is set aside and the respondents are directed to release the said withheld amount in favour of the petitioner within a period of three months from the date of receipt of a certified copy of this order.

Allowed.

07.05.2015

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(JITENDRA CHAUHAN)
JUDGE