

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

CWP No. 1307 of 2013 (O&M)

Date of decision: 25.05.2015

Kulwant Rai

...Petitioner

Versus

Punjab State Power Corporation and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashish Grover, Advocate for
Mr. H.S. Dhindsa, Advocate for the petitioner.

Mr. Adarsh Malik, Advocate for the respondents.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the letter dated 29.08.2012 (Annexure P-4), issued by respondent No.3, whereby, time bound promotional scale from the deemed date of joining was denied inspite of judgment dated 16.11.1984 passed by the Civil Court, granting the petitioner benefit of military service from 12.04.1973 to 27.03.1977, which has attained finality.

The learned counsel for the petitioner contends that the case of the petitioner is squarely covered by the ratio of law laid down by the Hon'ble Apex Court in case **State of Punjab and others** Vs. **Rafiq Masih**, 2015(1) SCT 195.

The learned counsel for the respondents refers to a Circular No. 59449/59649 dated 21.04.1987 and controverted the assertion raised by learned counsel for the petitioner.

In **State of Punjab and others** Vs. **Rafiq Masih**, 2015

(1) SCT 195, 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 the present case, the petitioner retired as Upper Division Clerk on 31.07.2012. The impugned order/letter dated 29.08.2012 (Annexure P-4), was passed after the retirement of the petitioner, which is not justified, in view of the ratio of law laid down in case of **Rafiq Masih** (supra). The amount, if paid, in excess,

is not on account of any lapse or misrepresentation on the part of the petitioner; it is the department who granted him such a payment, believing that the petitioner is entitled to it.

Therefore, keeping in view the above, the instant petition is allowed. The impugned order/letter dated 29.08.2012 (Annexure P-4) is set aside. The respondents are directed to refund the recovered amount, within a period of three months from the date of receipt of a certified copy of this order.

25.05.2015

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(JITENDRA CHAUHAN)
JUDGE