

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.202

CWP No.19719 of 2011

Date of decision: 05.11.2015

Sadhu Ram

....Petitioner

versus

The State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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

Ms. Shruti Jain Goyal, AAG, Haryana.

DEEPAK SIBAL, J. (Oral)

The only ground pressed before me is the challenge to the action of the respondents seeking to recover from the petitioner the already granted two advance increments. The recovery is sought to be made through impugned order dated 14.02.2011 (Annexure P-4).

It is not disputed that at the time of passing of the impugned order seeking to make recovery from the petitioner he was working on a Class-III post and that the impugned order dated 14.02.2011 (Annexure P-4) was passed within one year of his retirement as he retired from service on 31.03.2011.

In view of the aforesaid uncontroverted position on facts, the case of the petitioner would be fully covered in his favour by a recent judgment of the Apex Court in '**State of Punjab and others versus Rafiq Masih (White Washer)**' 2015(2) SCC 608, wherein it has been held that recoveries would be impermissible in law from the following category of employees:-

“(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 all 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.”*

The case of the petitioner is fully covered under categories (i) and (ii) as quoted above.

In view of the above authoritative pronouncement by the Apex Court in **Rafiq Masih's case (supra)** as quoted above, I have little hesitation in directing that no recovery in pursuance to the impugned order dated 14.02.2011 (Annexure P-4) shall be made from the petitioner.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

November 05, 2015

Jyoti I