

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

**CWP No.17340 of 2012
Decided on : 19.12.2015**

Jodha Ram

...Petitioner

Vs.

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Arvind Galav, Advocate for
Mr. Dinesh Kumar, Advocate
for the petitioner.

Mr. L.S.Virk, Addl. AG, Punjab.

G.S.Sandhawalia, J.(Oral)

The petitioner, who retired as Head Mali on 30.04.2011 challenges the order dated 20.07.2012 (Annexure P-21) vide which the pay of the petitioner has been reduced w.e.f. 28.03.1979 and recovery of Rs.51,847/- has been ordered on the basis of the audit objection dated 07.06.2005 (Annexure P-1). The petitioner also seeks the relief of the refund of the deducted amount and to grant interest on the same.

Counsel for the petitioner at the outset has restricted his claim only to the amount of recovery of above-said amount which has been withheld from the gratuity.

During the pendency of the petition, a fresh order has also been passed on 08.12.2015 (Annexure-R-4/2) by the Executive Engineer, Horticulture Division, PWD B&R, Patiala reiterating the earlier view that the fixation of the pay was incorrect.

It is not disputed that the issue of fixation of pay and the

correctness of the same was noticed by the audit authority for the year 1999-2000. Vide order dated 02.12.2015 the said amount of Rs.51,847/- had been worked out. Initially the recovery was sought to be effected at Rs.1000/- per month from the salary for the month of November 2007 by the refixation order dated 15.10.2007. On account of the legal notice being served on 07.11.2007 (Annexure P-6), the recovery was stopped and the matter was again sent for reconsideration which was rejected by the Deputy Controller (F&A) Ropar on 01.02.2010. As per the impugned order dated 20.07.2012 now passed, there is mention that the recovery amount was worked out to Rs.31,181/- as per the observations of the Deputy Controller, Finance, Ropar vide letter dated 06.02.2010 on account of the retirement of the petitioner on 30.04.2011. In the meanwhile, he served a legal notice on 22.06.2011 and approached this Court in CWP No.1009/2012 and direction was passed that appropriate orders be passed, which has led to the recovery order again being passed which is now impugned and reiterated vide order dated 08.12.2015 with the observation that audit cannot be settled without the recovery. As noticed above, counsel for the petitioner has submitted that he would be satisfied if only the recovery ordered is quashed on account of the observations of the Apex Court in the ***State of Punjab and others Versus Rafiq Masih (White Washer) etc., 2015(1) RSJ 177.***

The perusal of the above facts would go on to show that there is no misrepresentation on the part of the petitioner. The department for almost a decade is trying to sort out the pay of a Class IV employee. In such circumstances, in the absence of any misrepresentation or fraud on behalf of the petitioner, this Court is of

the opinion that the petitioner being a Class IV employee is entitled for the benefit of principles laid down in Rafiq Masih(supra) wherein it has been held that it is impermissible to make such recoveries from such categories of employees (Direction (i)). Rather the petitioner would fall in other categories (Directions (ii) & (iii)) also since the impugned order was passed after his retirement and secondly that he had been receiving that excess amount for a period in excess of 5 years when the recovery was made. The principles laid down read as under:

"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 discussions, this Court is of the opinion that the case is squarely covered by the above-said observation. Accordingly, the order of recovery of the aforesaid amount is quashed.

The said amount of Rs.51,847/- be paid to the petitioner. Since the amount has been withheld from the petitioner, who was only a Class IV employee, he will also be entitled for interest on the said amount @ 7% per annum after 2 months of his date of retirement. The said amount be disbursed to the petitioner within a period of 2 months from the date of receipt of certified copy of the order failing which the interest element will be paid @ 10% per annum.

The writ petition stands disposed of.

19.12.2015
sonia

(G.S.SANDHAWALIA)
JUDGE