

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.13389 of 2014(O&M)

Date of decision: 19.11.2015

Jasjit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr. S.M.Tripathi, Advocate for the petitioner.

Mr. Pankaj Mulwani, Deputy Advocate General, Punjab
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

Civil Misc. No.8302 of 2015

Prayer made in the present Civil Misc. Application for placing on record reply by way of counter affidavit on behalf of respondent no.4 is allowed.

The reply is taken on record.

Office to tag the same at appropriate place in the file.

The Civil Misc. Application stands disposed of accordingly.

Civil Misc. No.14886 of 2015 and
Civil Writ Petition No.13389 of 2014.

The petitioner challenges the order dated 15.5.2014 (Annexure P/3) whereby refixation of her pay has been done and the order dated 22.5.2014 (Annexure P/6) has been passed for the recovery of ₹ 1,17,558/- from the salary of the petitioner. Vide said order the monthly deduction was fixed at ₹ 5558/- in view of the forthcoming retirement of the petitioner on 30.7.2015 who was working as a Senior Assistant.

The petitioner approached this Court and vide order dated 25.8.2014, counsel on instructions from the petitioner, who was present in Court submitted that she was willing to submit herself to a lesser deduction spread out over a longer period of time and confined her prayer to that extent. Accordingly, recovery was reduced to 50% to the tune of ₹ 3000/- per month which was ordered to be recovered. Subsequently an application bearing Civil Misc. No.11340 of 2015 was filed that the case was covered by the judgment of the Apex Court in **State of Punjab Vs.**

Rafiq Masih and others 2015(1) SCT 195 and the petitioner belongs to a group of class III employees and recovery was due more than five years earlier and stay should be granted. The said application was allowed on 11.9.2015.

In the written statement filed by the State, it has been specifically averred that the petitioner herself was a dealing Assistant in this case and initiated the case of re-fixation of her pay. She had taken benefit of two increments twice i.e. in the old pay scale as well as in the new pay scale but the benefit could be given only once. The recovery of the excess payment was ordered to be made and was taken back from the salary of the petitioner as was mentioned in the office order that if any mistake was found at later stage, the same could be corrected. The pay of the petitioner in the old pay scale had been reduced from ₹ 7660/- to ₹ 7220/-.

In the rejoinder filed by the petitioner, it has been averred that the benefit of two increments had been given by the respondents which had been sanctioned by the sanctioning authority and she did not get the said benefit herself and recovery was started after eight years.

The factum of the petitioner herself being dealing Assistant and connected with the re-fixing of her pay has thus not been denied.

Counsel for the petitioner has placed reliance upon the judgment of the Apex Court in **Rafiq Masih's case** (supra) to submit that since the petitioner has now retired, therefore, recovery could not have been effected and that she falls within the exceptions laid down which are entitled for protection.

In the considered opinion of this Court, the judgment in **Rafiq Masih's case** (supra) would not be applicable in the facts and circumstances of this case. In the said judgment, the Supreme Court was dealing with the case where there was no misrepresentation made and where employees had not committed any fraud. The payments had been made in their accounts by the department which thereafter were being sought to be recovered. In the present case, it is a specific case of the respondents that the petitioner herself was involved in re-fixation of her pay which has not been denied by the petitioner. In such circumstances, re-fixation of pay of the petitioner and the recovery cannot be faulted with. The petitioner had herself at the initial stage before a coordinate Bench limited her prayer to reduction of the recovery from ₹ 5880/- to ₹ 3000/-

per month. Subsequently keeping in view the judgment in **Rafiq Masih's case** (supra), this Court stayed the recovery in toto. Now in view of the written statement filed, the petitioner cannot claim the said benefit as she is herself is at fault in getting her pay wrongly fixed at a higher scale.

Accordingly, the present writ petition is disposed of with a direction to the respondents to recover the amount in easy installments to the tune of ₹ 2000/- per month from the petitioner after giving the benefit of amount which has already been recovered from the petitioner.

November 19, 2015
Pka

(G.S.SANDHAWALIA)
Judge