

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19765 of 2012

Date of Decision:- 11.08.2015.

Randhir Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.S. Manhas, Advocate for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

P.B. BAJANTHRI, J. (ORAL)

1.) In this writ petition, petitioner has questioned the order dated 19.01.2011(Annexure P-3) by which a sum of ₹ 2,30,458/- has been ordered to be recovered from his gratuity. It is undisputed that the petitioner has not been given notice before issuing the aforesaid order. On this short ground, the petition is to be allowed.

2.) Heard learned counsel for the parties.

3.) The order dated 19.1.2011 (Annexure P-3) is quashed with liberty to the concerned respondent to proceed in accordance with law by giving necessary opportunity to the petitioner before passing any order. Such action shall be taken within a period of four months from today, while keeping in mind of the Supreme Court order passed in **C.A. No.11527 of 2014** titled as **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** disposed on 18.12.2014 with the following order:-

“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.*
- (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.*

13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories

delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

4.) Accordingly, the writ petition is disposed of.

(P.B. BAJANTHRI)
JUDGE

August 11, 2015.

sandeep sethi