

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

CWP No.20898 of 2012 (O&M)

Date of Decision: 31.08.2015

Suraj Kaur

..... Petitioner

Versus

DHBVNL and another

..... Respondents

CORAM: HONBLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Tejpal Singh Dhull, Advocate
for the petitioner.

Mr. Mohnish Sharma, Advocate
for the respondents.

DEEPAK SIBAL J. (ORAL)

The late husband of the petitioner while serving the respondent-Dakshin Haryana Bijli Vitran Nigam Ltd. (hereinafter referred to as the Nigam) as an Upper Divisional Clerk expired on 09.10.2003. While releasing retiral benefits to the petitioner, his widow, certain recoveries have been made on the ground that the late husband of the petitioner had been granted increments while he was serving the respondent-Nigam to which he was not entitled.

Whether such recoveries could be made, it is an issue which is no longer *res integra*. The Apex Court in “***State of Punjab Vs. Rafiq Masih (White Washer)***”, 2015(2) SCC 608, 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.

(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 late husband of the petitioner was a Class-III employee and the impugned recovery has been made from his retiral benefits. As per the above quoted decision given by the Apex Court in *Rafiq Masih's Case (supra)* this is clearly impermissible.

In view of the above, the impugned order dated 19.10.2009 (Annexure P6) is quashed and recovery, if any, effected from the petitioner be released to her within two months from today alongwith all consequential benefits.

The writ petition stands allowed in the above terms.

No costs.

31.08.2015
Bhumika

(DEEPAK SIBAL)
JUDGE