

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.20404 of 2013 (O&M)

Date of Decision : 16.01.2015

Gian Singh

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment?Yes

2) To be referred to the Reporters or not?Yes

3) Whether the judgment should be reported in the Digest?Yes

Present : Mr. Nand Lal Sammi , Advocate for the petitioner

Mr. Harkesh Manuja, Addl. AG, Punjab

MAHESH GROVER, J.

The petitioner who was working as Baledar was granted two additional increments in the year 1993 and 1995 (1.6.1993 and 1.4.1995).

The amount of these increments are now sought to be recovered from the petitioner on the ground that they were erroneously given.

Annexure P-1 is therefore challenged in the instant petition.

The petitioner contends that such a course is not available to the respondents as the benefit was never taken by misrepresentation on behalf of the petitioner.

Respondents have justified their stand and contend that it was a mistake committed by them which they were entitled to rectify to effect recovery. Hon'ble Supreme Court in case Civil Appeal no. 11527 of 2014 titled as **State of Punjab and others etc. vs. Rafiq Masih (White Washer)**

etc. decided on 18.12.2014 has observed 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.”

Keeping in view the aforesaid facts when the case of the

petitioner is squarely covered by the ratio of the aforesaid judgment and considering the fact that the petitioner who was working as Beldar and stands retired from service, he cannot be subjected to recovery by virtue of Annexure P-1. Impugned order is hereby quashed. Petition stands allowed.

January 16, 2015
rekha

(MAHESH GROVER)
JUDGE