

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.1812-2014

Date of Decision:15.09.2015

PREM CHAND MITTAL

....Petitioner

VERSUS

STATE OF HARYANA & ORS.

....Respondents

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

Present: Mr. Prashish Kanwar, Advocate,
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana.

Mr. P.S Poonia, Advocate,
for respondents No. 2,4 and 5.

Mr. D.K Singal, Advocate,
for respondent No.6.

P.B BAJANTHRI, J. (Oral)

In this petition, the petitioner has questioned the order dated 27.12.2013 passed by respondent No. 5, by which recovery of Rs.2,11,255/- has been ordered.

It is undisputed that Annexure P-9 dated 27.12.2013 has been passed without issuing notice to the petitioner. On this short ground, Annexure P-9 dated 27.12.2013 is set aside. This order will not come in the way of taking decision by the competent authority, in so far as recovery matter is concerned. However, the same shall be subject to various conditions imposed in decision of the Hon'ble Apex Court passed

in C.A No. 11527 of 2014 titled as State of Punjab and others Vs. Rafiq

Masih 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.”

Accordingly, the writ petition is disposed of.

15.09.2015

PA

(P.B BAJANTHRI)

JUDGE