

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

CWP-18238-2014 (O&M)
Date of decision : 12.05.2015

Dev Lal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. M.K. Dogra, Advocate,
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioner is aggrieved against the order dated 17.05.2012 (P-2), whereby, an amount of Rs.2,35,753/- has been ordered to be recovered from the retiral dues of the petitioner.

The learned counsel cites *State of Punjab Vs. Rafiq Masih, 2015(1) S.C.T. 195*, and states that the impugned order of recovery deserves to be set aside.

On the other hand, the learned State counsel submits that the pay of the petitioner was fixed in the wrong pay scale of Rs.1200-2100, which now stands withdrawn.

It is not in dispute that the pay of the petitioner was fixed

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by the respondents from time to time without there being any misrepresentation or fraud on the part of the petitioner. In Rafiq Masih's case (supra), it has been 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.

The case of the petitioner is squarely covered by the ratio of law as laid down in Rafiq Masih's case (supra). The amount paid in excess, if any, is not on account of any lapse on the part of the petitioner; it is the department which erred in granting him such a payment.

Therefore, keeping in view the above, the instant petition is allowed and the impugned order, Annexure P-2, to the extent of

recovery of Rs.2,35,753/- is set aside.

It has been asserted by the learned counsel for the petitioner that the amount of Rs.2,35,753/- stands recovered by the respondents by way of withholding this amount from the gratuity of the petitioner. Accordingly, the respondents are directed to release the withheld amount of gratuity to the petitioner along with interest at the statutory rate as provided under the Payment of Gratuity Act, 1972, within four months from the date of receipt of a certified copy of this order.

Allowed.

12.05.2015

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(JITENDRA CHAUHAN)
JUDGE