

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.205

CWP No.3133 of 2012

Date of decision: 25.08.2015

Hawa Singh

....Petitioner

versus

The State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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

Mr. Harish Rathee, Senior DAG, Haryana.

DEEPAK SIBAL, J. (Oral)

Recovery is sought to be made by the respondents from the petitioner, a Class III employee for extra amount drawn by him from 18.08.2009 to 01.06.2011 on account of wrong fixation of his pay.

It is not the case of the respondents that they had granted the above-said extra amount to the petitioner on account of any misrepresentation or fraud on part of the petitioner.

Whether the above-said recovery like in the case in hand can be made from a Class III employee, like the petitioner, is no longer *res integra* as in 'State of Punjab and others versus Rafiq Masih (White Washer) etc., 2015(2) SCC (Civil) 608, the Apex Court has authoritatively held as under:-

“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 case of the petitioner is fully covered in his favour as per the above quoted direction (i).

In view of the above, the impugned recovery notice dated 17.09.2011 (Annexure P-1) is ordered to be quashed. Recovery, if any, made from the petitioner, be released to him within two months from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

August 25, 2015
Jyoti I