

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

CWP No. 21208 of 2014 (O&M)

Date of decision: 19.05.2015

Sant Lal

...Petitioner

Versus

Punjab Water Resources Management & Development Corp., Ltd.

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: None for the petitioner.

Mr. Sameer Sachdeva, Advocate for
Mr. Vishal Sharma, Advocate
for the respondent.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the office orders dated 17.10.2012 (Annexure P-2), 20.03.2013 (Annexure P-3), letter dated 24.07.2013 (Annexure P-5) and for issuance of directions to the respondent to release the entire amount of leave encashment.

2. There is no representation on behalf of the petitioner.
3. It is averred in the petition that the petitioner retired as Assistant Engineer on 31.07.2012. After the retirement of the petitioner, his pay was re-fixed and the benefit of 24 years

proficiency step up given to the petitioner on 13.05.1999, was withdrawn, by way of order dated 17.10.2012 (Annexure P-2). Thereafter, vide office order dated 20.03.2012 (Annexure P-3), recovery of Rs.1,38,914/- had been effected from the payment of leave encashment of the petitioner. The petitioner had also submitted a representation dated 24.06.2013 against the aforesaid recovery but in vain.

4. On the other hand, the learned counsel for the respondent submits that the recovery proceedings were initiated, in view of the letter dated 06.07.2005, issued by the Government of Punjab.

5. In **State of Punjab and others** Vs. **Rafiq Masih**, 2015(1) SCT 195, the Hon'ble Apex Court 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.

6. In the present case, the petitioner was retired as Assistant Engineer on 31.07.2012. The impugned orders dated 17.10.2012 (Annexure P-2), 20.03.2013 (Annexure P-3) and letter dated 24.07.2013 (Annexure P-5), were passed after the retirement of the petitioner, which is not justified, in view of the ratio of law laid down in case of **Rafiq Masih** (supra). The amount, if paid, in excess, is not on account of any lapse or misrepresentation on the part of the petitioner; it is the department who granted him such a payment, believing that the petitioner is entitled to it.

7. Therefore, keeping in view the above, the instant petition is allowed. The impugned order dated 17.10.2012 (Annexure P-2) to the extent that “in case any excess payment has been made, the same be recovered from the arrears of salary etc.,” order dated 20.03.2013 (Annexure P-3) to the extent of “recovery of excess payment of Rs. 1,38,914/-” and letter dated 24.07.2013 (Annexure P-5), are set aside/quashed. The respondents are directed to refund the recovered amount Rs. 1,38,914/-, within a period of three months from the date of receipt of a certified copy of this order.

19.05.2015

sumit.k

(JITENDRA CHAUHAN)
JUDGE