

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

**CWP No.20738 of 2015
Date of Decision: 23.12.2015**

JOGINDER SINGH AND OTHERS

..... Petitioners

VERSUS

THE STATE OF HARYANA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ravi Verma, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

DEEPAK SIBAL J. (ORAL)

The petitioners who are serving the respondents-State of Haryana as JBT teachers (Class III Service) have filed the present petition seeking quashing of orders retrospectively re-fixating their pay and the resultant recovery in pursuance thereof.

Though the present petition was filed with the aforementioned prayers, the only issue pressed before me today is with regard to the challenge to the recovery sought to be effected from the petitioners in pursuance to their retrospective pay fixation.

That being so, the prayer made by the petitioners, who admittedly are Class III employees is to be allowed in view of the decision of the Apex Court in “*State of Punjab and others Vs. Rafiq Masih (White Washer) etc.* 2015(2) SCC (Civil) 608”, wherein it has been held that recoveries from employees belonging to Class III employees is impermissible. The relevant observations by the Apex Court in Rafiq Masih's case (supra) are reproduced below:

“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 petitioners is fully covered by para (i) the above quoted observations made by the Apex Court in Rafiq Masih's case (supra).

In view of the above facts and the settled position of law, the recoveries ordered against the petitioners are set aside.

The writ petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

23.12.2015
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