

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 213

Case No. : C. W. P.No. 5508 of 2012

Date of Decision : March 30, 2015

Rajinder Kumar Kundi and others Petitioners

Vs.

Punjab Water Resources Management
and Development Corporation
Limited, Chandigarh and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Abhishek Singla, Advocate
for the petitioners.

Mr. I. S. Sidhu, Advocate
for the respondents.

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DEEPAK SIBAL, J. :

Petitioner no. 1 was designated as a Sub Divisional Engineer (SDE) (Current Duty Charge), whereas petitioners no. 2 and 3 were designated as Assistant Engineers with the Punjab Water Resources Management and Development Corporation Limited (hereinafter referred to

as – the Corporation), when, on the completion of 24 years of service, they were granted the benefit of second proficiency step up w.e.f. 02.01.2002, 25.10.2002 and 12.06.2004 respectively.

Vide letter dated 23.09.2010, the aforesaid proficiency step up granted to the petitioners was withdrawn and accordingly, the salaries of the petitioners were re-fixed. Thereafter, on the basis of above order of withdrawal dated 23.09.2010, the respondent Corporation issued recovery notices dated 04.03.2011 qua all the three petitioners. It is these recovery notices, which have been challenged by the petitioners in the present writ petition on the ground that the petitioners have committed no fraud or misrepresentation and that these recoveries had been ordered after a period of seven to nine years after the benefits had been granted to them.

In the written statement so filed on behalf of the respondent Corporation, it is admitted that the petitioners never misrepresented or committed fraud. The factum of recoveries, sought to be made after a period of seven to nine years of granting of such benefits, is also admitted.

In a recent decision, the Apex Court, in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported as **JT 2015 (1) SC 95**, 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.

(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. [Emphasis supplied]"

The case of the petitioners is fully covered in their favour by direction of the Apex Court contained in Paragraph 12 (iii), as reproduced above, as the excess payment made to them was admittedly made more than five years before the order of recovery. That being so, the impugned recovery notices dated 04.03.2011 (Annexures P-1 to P-3) are directed to be quashed.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

March 30, 2015
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