

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

CWP-2287-2015

Date of decision : 07.07.2015

Gurbachan Singh

...Petitioner

V/S

State of Punjab and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. O P Gabba, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

This writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 25.09.2013 (Annexure P-1) wherein recovery to the tune of Rs.45,899/-, in the order of payment of gratuity, has been effected upon the petitioner and for issuance of directions to the respondents to refund the said amount with interest thereon @18% per annum from the date of recovery till actual payment.

Reply by way of affidavit of Mr. Kuldeep Singh Chahal, IPS, Senior Suptt. of Police, Sri Muktsar Sahib on behalf of respondent Nos.1 and 2, filed in the Court, is taken on record.

Learned counsel for the petitioner contends that the petitioner did not misrepresent or concealed any fact. He further submits that case of the petitioner is squarely covered by a judgment of

Hon'ble Supreme Court of India titled as ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) Recent Apex Judgments 104.***

In ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.*** 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.

(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.

In these circumstances, this petition is disposed of with a direction to the respondents to refund the recovered amount i.e. Rs.45,899/- to the petitioner within eight weeks from the receipt of a certified copy of this order.

07.07.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**