

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

Civil Writ Petition No. 5791 of 2012(O&M)

Date of Decision: December 8 , 2015.

Sham Sarup

..... PETITIONER (s)

Versus

Punjab Mandi Board and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Jagdeep Bains, Advocate
for the petitioner.

Mrs. Meena Bansal, Advocate for
Mrs. Gurpal Kaur Daulat, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This writ petition has been preferred seeking direction to the respondents to release a sum of ₹43,449/- which is stated to be deducted illegally from pensionary benefits of the petitioner on the pretext that he was wrongly granted one increment as Mandi Supervisor way-back in the year 1987. No notice whatsoever was issued and in fact, no order was passed reducing the petitioner's basic pay from ₹28,590/- to ₹27,750/- as on 01.01.2011.

Petitioner initially appointed as Auction Recorder on 03.02.1975

with Market Committee, Pathankot superannuated on 28.02.2011. As per Memo dated 16.11.2011 Annexure R1, said deductions are effected on the basis of an audit objection, nine months after the petitioner retired.

Learned counsel for the petitioner submits that this case is squarely covered by the judgment of Hon'ble Supreme Court in **State of Punjab and others v. Rafiq Masih (White Washer) etc., 2015 (1) SCT 195**. No recovery or deduction could have been effected from the retiral benefits of the petitioner on account of fixation of pay when there was no misrepresentation, misleading or concealment by the petitioner. Fixation of pay was carried out after due approval by the competent authority. Promotion was afforded to the petitioner to the post of Mandi Supervisor on 11.02.1987. Basic pay of ₹28,590/- was approved by the Secretary and Chairman of the Committee on 01.01.2011. There was no necessity to take approval under Section 20(2) of the Market Committee Act.

Learned counsel for respondents is unable to deny the factual matrix as above.

A similar issue came to be dealt with by the Hon'ble Supreme Court vide decision dated 02.08.2013 in Special Leave to Appeal (Civil) No.24607/2010, **State of Punjab and Others Vs. Krishan Kumar Bansal and Others**, and it is held as under:-

“These petitions are directed against the orders passed by the learned Single Judges of the Punjab and Haryana High Court whereby recovery of the alleged excess amount paid to the respondents was quashed by relying upon the order passed by the Full Bench in Civil Writ Petition No. 2799 of 2008 – Budh Ram and others vs. State of Haryana and others and the orders passed by other

learned Single Judges.

We have heard Shri Nikhil Nayyar, learned Additional Advocate General appearing on behalf of the petitioners at length and carefully perused the record.

Shri Nayyar fairly conceded that in none of these cases, the respondents were responsible for mistake committed in the fixation of their pay. He, however, relied upon the judgment of a two-Judge Bench in Chandi Prasad Uniyal v. State of Uttarakhand (2012) 8 SCC 417 and argued that the amount erroneously paid to the employees can be recovered from them even though they may not be responsible for wrong fixation of their pay, etc.

In our opinion, there is no merit in the argument of the learned Additional Advocate General. By an order dated on 29.07.2013, a three Judge Bench dismissed Special Leave Petition (Civil)/2010 (CC 14653 of 2010) which was directed against order dated 22.07.2009 passed by the learned Single Judge in RSA No. 2703 of 2009. The relevant portions of order dated 29.07.2013 are extracted below:

“This petition is directed against order dated 22.07.2009 passed by the learned Single Judge of the Punjab and Haryana High Court whereby he dismissed the second appeal filed by the petitioners and upheld the judgments and decrees passed by the trial Court and the lower appellate Court nullifying the recovery of the amount allegedly paid to the respondent in excess of what was due to him. We have heard Shri Kuldip Singh, learned counsel for the petitioners and carefully perused the record. In our considered opinion, the order under challenge does not suffer from any legal infirmity requiring interference under Article 136 of the Constitution. It was neither the pleaded case of the petitioners before the trial Court nor it was argued that the respondent was, in any way, responsible for any mistake committed by the concerned authority in the fixation of his pay. Therefore, the recovery sought to be effected from him was wholly arbitrary, unjustified and violative of the rules of natural justice. With the above observation, the special leave petition is dismissed.”

In view of the above order, these petitions are liable to be dismissed.”

Concededly, since there is no misrepresentation and misleading on the part of petitioner, this matter is squarely covered by the aforesaid judgment.

Consequently, this writ petition is disposed of with a direction to the respondents to refund the amount deducted from the retiral dues of the petitioner within a period of two months from the date of receipt of a certified copy of this order.

December 9 , 2015.
'om'

(LISA GILL)
JUDGE