

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24090 of 2015

Date of Decision: 18.11.2015

Shashi Bala

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nirmal Singh, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. There can be no doubt that this matter is covered by the ratio of the decision rendered in CWP No.6898 of 2015 titled *Upasna Attri vs. State of Punjab and others* decided on October 09, 2015.

2. The petitioner belongs to the same service and is faced with the same predicament of recovery of money ordered retrospectively from her Death-cum-Retirement-Gratuity [DCRG] which was paid at the time of her superannuation from service. The origin of dispute lies in grant of higher grade pay in the year 2011 which is said to be by mistake in overpayment beyond admissible Grade Pay. The petitioner has retired from service recently in June 2015.

3. Notwithstanding the above, recovery is not possible in view of the directions issued by the Supreme Court in **State of Punjab v. Rafiq Masih**, (2015) 4 SCC 334 evolving wholly fresh principles of recovery

when becomes impermissible and cannot be effected from an employee by the employer on the principles indicated in paragraph 18 of the judgment and especially directions (i), (ii) & (iii) contained in the report.

4. Notice of motion.

5. Mr. Inqulab Nagpal, AAG, Punjab on the asking of the Court accepts notice on behalf of the respondents and waives service on them.

6. Faced with the order passed in the aforesaid writ petition and in view of the enunciation of law in *Rafiq Masih*, Mr. Nagpal has no plausible defence to set up and, therefore, it is not necessary to invite written statement from the respondent State when the matter is *ex facie* covered by the principles in *Rafiq Masih* which are binding on both civil and judicial authorities across the territory of India. The petitioner retired from Group-C/Class-III service and is protected by the decision aforesaid. The impugned order has been passed after her retirement. In view of the situation obtaining, the impugned order dated October 01, 2015 (P-2) is held not legally sustainable and the same deserves to be set aside to the extent the impugned order is adverse to the interest of the petitioner.

7. Accordingly, the petition is allowed. The impugned order dated October 01, 2015 (P-2) is set aside to the extent it is adverse to the petitioner. A writ of prohibition is issued restraining the respondent-State from recovering the amount mentioned in the impugned order from the DCRG of the petitioner or from any of her retirement benefits including pension etc. Order dasti.

(RAJIV NARAIN RAINA)
JUDGE

18.11.2015
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