

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

C.W.P. No.28525 of 2013 (O&M)

Date of Decision: 10.2.2015

Arvind Kumar Tyagi

...Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Mr. Justice Rajesh Bindal

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

Mr. Kuldeep Tiwari, Addl. Advocate General, Haryana.

.....

RAJESH BINDAL, J.

The petitioner is aggrieved against the communication dated 9.9.2011 (Annexure P-1), whereby the amount allegedly excess paid to the petitioner from 1.10.1992 to 9.9.2011, amounting to ₹ 64,632/-, is sought to be recovered.

Learned counsel for the petitioner submitted that it is sought to be claimed by the State that an increment of ₹ 60/- was wrongly given to the petitioner on account of which, recovery was sought to be made.

Hon'ble the Supreme Court in State of Punjab and others v. Rafiq Masih (White Washer) and others, 2015 (1) RSJ 177 while dealing with the issue had opined 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."

The case set up by the State is not that the petitioner in any manner was at fault or misled the Department for granting the benefit he had availed for the last about 20 years. In the aforesaid judgement, Hon'ble the Supreme Court opined that recovery from an employee of any excess payment for a period in excess of five years before the order of recovery is issued, is impermissible in law. In the present case, recovery is sought to be made for the period of about 20 years. Accordingly, the impugned communication (Annexure P-1) seeking to recover the amount allegedly excess paid to the petitioner from 1.10.1992 to 9.9.2011, is set aside.

The petition stands disposed of.

(Rajesh Bindal)
Judge

10.2.2015

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