IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26114 of 2014 (O&M)
Date of decision: 30.06.2015

Ujjagar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. H.S. Saini, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

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Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the impugned orders dated 26.08.2014 (Annexure P-4) and dated 08.09.2014 (Annexure P-5), passed by respondent No.3, whereby recovery of Rs.2,91,889/- was made from the retiral benefits of the petitioner.

The learned counsel for the petitioner contends that the case of the petitioner is squarely covered by the ratio of law laid down by the Hon'ble Apex Court in case **State of Punjab and others** Vs. **Rafiq Masih**, 2015(1) SCT 195.

The learned State counsel is unable to controvert the assertion raised by learned counsel for the petitioner. He informs that the ACP will be calculated within six weeks after the receipt of certified copy of the order and paid to the petitioner within four weeks thereafter.

In **State of Punjab and others** Vs. **Rafiq Masih**,2015 (1) SCT 195, the Hon'ble Apex Court 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.*

In the present case, the petitioner retired as Welder on 31.05.2013. The impugned orders dated 26.08.2014 (Annexure P-4) and dated 08.09.2014 (Annexure P-5), were passed after the retirement of the petitioner, which is not justifiable, in view of the ratio of law laid down in case of **Rafiq Masih** (supra). The amount, if paid, in excess, is not on account of any lapse or misrepresentation on the part of the petitioner; it is the department who granted him such a payment, believing that the petitioner is entitled to it.

Therefore, keeping in view the above, the instant petition is allowed. The impugned orders dated 26.08.2014 (Annexure P-4) and dated 08.09.2014 (Annexure P-5) are set aside. The respondents are directed to refund the recovered amount, within a period of three months from the date of receipt of a certified copy of this order.

As the main relief has been granted to the petitioner, the petitioner is at liberty to move an appropriate application for interest on the delayed payment before the competent authority. The competent authority shall examine and decide the same in view of the ratio of law laid down in case ***The Financial Commissioner and Principal Secretary to Govt. of Haryana, Irrigation Department, Civil Secretariat, Chandigarh*** *Vs.* ***Hasan Singh Kanwar****, 2010(1) SLR 788* and **A.J. Randhawa** Vs. **State of Punjab**, *1998(1) SCT 343.*

30.06.2015 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**