

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

**CWP No.8666 of 2012
Date of Decision:15/09/2015**

Smt. Shakuntla Arora

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Naveen Daryal, Advocate
for the petitioner.
Mr. Harish Rathee, Sr. D.A.G. Haryana.

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

DEEPAK SIBAL, J. (Oral)

The only grievance pressed on behalf of the petitioner is that after her retirement on 28.02.2010, recovery of Rs.17915/- has been made on account of excess pay received by her.

Whether the above-said recovery like in the case in hand could be made from a retired employee, like the petitioner, is no longer *res integra* as in '***State of Punjab and others versus Rafiq Masih (White Washer) etc.***, 2015(2) SCC 608, the Apex Court has authoritatively held as under:-

“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 of the petitioner being a retired employee is fully covered under the above quoted directions of the Apex Court in *Rafiq Masih's* case (supra) and the recovery made from the petitioner was impermissible in law.

In view of the above, amount of Rs.17915/- recovered from the petitioner after her retirement is directed to be released to her within two months from the date of receipt of a certified copy of this order, failing which, she would be entitled to simple interest at the rate of 6% per annum.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

15.09.2015
rajeev