

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

CWP No.26626 of 2014

Date of Decision:11/08/2015

Paramjit

...Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. M.K. Dogra, Advocate for the petitioner.

Mr. Ranbir Singh Pathania, D.A.G. Punjab.

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

DEEPAK SIBAL, J. (Oral)

Through the impugned order dated 2.9.2014 (Annexure P-8) a recovery of Rs.1,60,457/- was sought to be effected from the petitioner on account of wrong fixation of pay. It is this recovery that the petitioner challenges through the present petition.

It is not disputed that the petitioner is a Class-III employee, who has already retired on 30.4.2012 and that the impugned recovery sought to be effected from him is on account of wrong fixation of pay which was made in the year 1998.

In case of **State of Punjab and others v. Rafiq Masih (White Washer) etc.** Civil Appeal No.11527 of 2014 (Arising out of SLP © No.11684 of 2012) decided on 18.12.2014, the 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.

(v) In any other case, where the Court arrives at the conclusion, that recovery is 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.”

In view of the above authoritative pronouncement by the Apex Court, no recovery can be effected from the petitioner, who is Class-III retired employee and when the impugned recovery is sought to be effected from him of an amount which was released to him over five years ago.

Resultantly, the impugned order dated 2.9.2014 (Annexure P-8) is quashed. As the above said recovery amount has been withheld from the retiral benefits of the petitioner, the same is ordered to be released within one month from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

11.08.2015
rajeev