

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

(1) CWP No. 3491 of 2015 (O&M)

Y.N. Chugh ...Petitioner

Versus

Haryana Power General Corporation Ltd., and others

...Respondents

(2) CWP No. 3473 of 2015 (O&M)

D.S. Ahlawat ...Petitioner

Versus

Haryana Power General Corporation Ltd., and others

...Respondents

(3) CWP No. 3516 of 2015 (O&M)

J.C. Kinra ...Petitioner

Versus

Haryana Power General Corporation Ltd., and others

...Respondents

(4) CWP No. 5115 of 2015 (O&M)

G.D. Mehta ...Petitioner

Versus

Haryana Power General Corporation Ltd., and others

...Respondents

(5) CWP No. 6959 of 2015 (O&M)
Arun Kumar
...Petitioner

Versus

Haryana Power General Corporation Ltd., and others
...Respondents

(6) CWP No. 3520 of 2015 (O&M)
S.P. Chinda
...Petitioner

Versus

Haryana Power General Corporation Ltd., and others
...Respondents

DATE OF DECISION: 15.07.2015

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashwani Talwar, Advocate with
Ms. Sanamjeet Kaur, Advocate for the petitioner
(in CWP Nos. 3491, 3473, 3516 and 3520 of 2015).

Mr. S.P. Garg, Advocate for the petitioner
(in CWP Nos. 6959 and 5115 of 2015).

Mr. Ashok S. Chaudhary, Advocate
for respondents No.1 to 3.

Mr. Mahesh Dheer, Advocate for respondent No.4.

Jitendra Chauhan, J. (Oral)

CM-5117-CWP-2015 in CWP-3491-2015

Allowed as prayed for. Written statement filed on behalf
of respondent No.4-Bank is taken on record.

Main case

The aforementioned writ petitions are being decided by way of this common order, as the identical issues have been involved in the matter. However, the facts are being derived from CWP No. 3491 of 2015.

2. The petitioner seeks quashing of the impugned order dated 10.02.2015 (Annexure P-9), issued by respondent No.2, vide which the recovery of Rs. 2,73,763/- has been ordered in 16 equal installments from the pension of the petitioner, on account of alleged excess payment made to him.

3. It is contended that after attaining the superannuation on 31.03.2008, the petitioner retired from respondent-Corporation. The petitioner was given contractual appointment as Director on an Ex-cadre post for one year, vide order dated 31.03.2008 (Annexure P-1). Thereafter, the petitioner was granted extension for one year, vide order dated 20.03.2009 (Annexure P-3) and again he was appointed on another Ex-cadre post, vide order dated 20.04.2010 (Annexure P-4). The petitioner discontinued his service after 15.07.2010. Thereafter, the respondent-Corporation, served a show cause notice dated 09.10.2014 (Annexure P-6), after a lapse of more than three years, upon the petitioner. The petitioner also submitted reply to the said show cause notice, however, the impugned order dated 10.02.2015 (Annexure P-9) had been passed. The respondent-

Corporation had specified the remuneration to be paid to the petitioner during the period of contractual appointment. The remuneration being paid to the petitioner during his service was disbursed by the respondents themselves.

4. The learned counsel cites **State of Punjab Vs. Rafiq Masih**, 2015(1) SCT 195 and states that once the petitioner had retired from service, the Department had no right to recover the amount from his pensionary benefits. He further submits that otherwise also, such a recovery is even beyond the period of limitation of three years and is further against the provisions of Rule 2.2 of the Punjab Civil Services Rules as applicable to the State of Haryana.

5. On the other hand, the learned counsel for the respondent-Corporation refers to Rule 7.17 and 7.18 of the Punjab Civil Services Rules, Vol-II and states that in the case of re-employment of any retired Govt., employee, his pay is to be fixed in accordance with the provisions made in the above said Rules. On re-employment of the petitioner, his pay was not fixed in accordance with the above Rules and he was paid excess salary beyond his admissible salary. Therefore, the recovery of over payment of salary is not going to cause any financial hardship to the petitioner and the impugned order dated 10.02.2015 (Annexure P-9) has been rightly passed by the respondent-Corporation.

6. I have heard the learned counsel for the parties and perused the record with their able assistance.

7. In **State of Punjab** 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.

8. In the present case, the petitioner was re-employed on a contractual post, vide order dated 31.03.2008 (Annexure P-1). He discontinued his services 15.07.2010. The show cause notice dated 09.10.2014, was served upon the petitioner after a lapse of more than three years. Earlier, the petitioner retired from respondent-Corporation on 31.03.2008. The petitioner had no knowledge that the amount that was being paid to him was more than what he was

entitled to. The impugned order dated 10.02.2015 (Annexure P-9) was passed after the petitioner had already left the job. Moreover, 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 was entitled for the same.

9. Therefore, keeping in view the above, the instant petitions are allowed in terms of **Rafiq Masih's** case (supra). The impugned order dated 10.02.2015 (Annexure P-9), issued by respondent No.2 is set aside.

15.07.2015

sumit.k

(JITENDRA CHAUHAN)
JUDGE