

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.7226 of 2013
Date of Decision: 20.11.2015

Jai Kishan

..... *Petitioners*

Versus

State of Haryana and others

..... *Respondents*

CORAM: HONBLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Neena Bansal, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

DEEPAK SIBAL J. (ORAL)

Through the present writ petition, challenge is made to the order dated 21.06.2010 (Annexure P-1) through which recovery of ₹59,338/- has been ordered to be recovered from the gratuity of the petitioner on the ground that he was wrongly given the aforesaid amount by giving him benefit of *ad hoc* service towards payments made under the Assured Career Progression Scheme (ACP).

It is the uncontroverted position that the petitioner retired from service on 31.03.2010 before the issuance of impugned order of recovery, as an Assistant Cashier i.e. a Class III employee.

That being so, the impugned recovery order having been passed after his retirement and qua a Class III employee like the petitioner cannot be allowed to sustain in view of the authoritative

pronouncement by the Apex Court in 'State of Punjab and others versus Rafiq Masih (White Washer) etc., 2015(2) SCC (Civil) 608, wherein it has been 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 is fully covered in his favour as per the above quoted direction (i) and (ii) given in *Rafiq Masih's case (supra)*.

In view of the aforesaid position, the impugned recovery order dated 21.06.2010 (Annexure P-1) is ordered to be set aside. The

amount of ₹59,338/- be released to the petitioner along with interest @ 6% per annum. The needful be done within three months from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms

20.11.2015

Bhumika

(DEEPAK SIBAL)
JUDGE