IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 226

Case No. : C. W. P. No. 6857 of 2014

Date of Decision : April 20, 2015

Onkar Singh and others .... Petitioners

vs.

Chairman-cum-Managing Director,
Punjab State Power Corporation Ltd.
and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. D. R. Punia, Advocate
for the petitioners.

Ms. Jaspal Kaur Gurna, Advocate
for the respondents.

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DEEPAK SIBAL, J. :

It is not disputed that all the petitioners, while working as Junior Meter Readers, were, in January 2003, granted benefit of increment, which, on account of an audit objection, is sought to be recovered from them through recovery orders dated 07.03.2014 (Annexure P-3) i.e. after a delay of over 11 years. It is further not disputed before me that there is no misrepresentation or fraud played by either of the petitioners, which resulted in the grant of above said increment to them on 01.01.2003. That being so, the above recovery cannot be made from the petitioners in view of the recent announcement by the Apex Court in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** - **Civil Appeal No. 11527 of 2014** (arising out of **SLP (C) No. 11684 of 2012**), wherein it has been 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:*
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> ***(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.*
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> ***13.*** *We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.*
>
> ***14.*** *The appeals are disposed of in the above terms.*"

Admittedly, the petitioners are Class III employees and recoveries on account of excess payment are sought to be made from them after over 11 years. This is clearly impermissible in view of the above principles laid down by the Apex Court.

Resultantly, the impugned orders of recovery, qua all the petitioners (Annexures P-2 and P-3), are ordered to be quashed.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

April 20, 2015
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