

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 6882 of 2015 (O & M)

Date of decision: 17.09.2015

Mohan Dass

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Pritam Saini, Advocate,
for the petitioner.

Mr. Rakesh Verma, Sr. DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner has challenged the order dated 07.10.2014 (Annexure P-4) whereby, the promotion granted to the petitioner as Technician Grade-III was cancelled and also the benefit of the 4 year higher placement granted to him as Technician Grade-III. The petitioner was accordingly placed in the next higher grade of ₹5910-20200 + 2400 grade pay with benefit of one annual increment. The pay of the petitioner vide order dated 23.02.2015 (Annexure P-5) was reduced and various amounts of recoveries were assessed in Columns No. 2 to 5 from various dates.

Counsel for the petitioner has restricted his relief only to the recovery which is being effected in pursuance of the subsequent order dated 23.02.2015 (Annexure P-5) mainly on the strength of the judgment of the Apex Court in *State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (1) RSJ 177*. It has specifically been mentioned in para

no. 15 that necessary procedure of show cause notice etc. had been followed but the petitioner is covered by the above said judgment.

In the reply to the said paragraph, the State has not denied the said factor of the petitioner being covered.

Even, a perusal of the order which is under challenge would go on to show that the petitioner was granted various financial benefits from the year 2003 onwards on completion of 16 years of service. The same are now sought to be refixed on the basis of a letter dated 19.05.1998 whereby, the ratio of the employees in the composing trade on the post of Technician Grade-III (Computers), Technician Grade-III (Compositors) and Technician Grade-III (Distributors) were divided in the ratio of 20:30:50 w.e.f. 01.01.1996.

The petitioner had been issued show cause notice dated 21.07.2014 whereby, the department had given him time to explain as to why his promotion order be not cancelled and pay should not be refixed.

In his reply to the same dated 28.07.2014, he has averred that he had performed all the duties assigned by the Government which had been granted and the billing was done by the bill section and there was no fault on his part and when he was promoted, the ratio of 20:30:50 was available.

Thus, it is apparent that for no fault of the petitioner, the recovery is being effected and it is not the case of the respondents that there was any concealment or misrepresentation on his part which would entitle the respondents to recover the amount after the petitioner had worked on the promotional post.

The Apex Court in *Rafiq Masih's case (supra)* has specifically held that where the employee has been required to discharge duties at a

higher post and has been paid accordingly, then recovery would be impermissible under category (iv). The principles laid down for the categories of employees where recovery is impermissible are 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 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.”

Resultantly, keeping in view the above discussion, the present

writ petition is disposed of by restraining the respondents from making any

recovery in pursuance of the order dated 23.02.2015 (Annexure P-5).

17.09.2015
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(G.S. SANDHAWALIA)
JUDGE