

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

LPA No. 1149 of 2015. [O&M]
Date of Decision: 04th August, 2015.

State of Haryana & Ors. Appellants through
 Mr. Saurabh Girdhar, AAG, Haryana.
Versus

M.K.Malhotra & Ors. Respondents.

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
 HON'BLE MR. JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J. [ORAL]

CM No. 2422 of 2015

The prayer in this application is for condoning the delay of 541 days in filing the appeal.

The appellant – State filed a review application after delay of 259 days which was condoned by learned Single Judge.

After deduction of the period upto the date of dismissal of the review application on 16.01.2015, there is not a substantial delay in filing the accompanying appeal. We, therefore, condone the delay in filing the appeal.

CM stands disposed of.

LPA No. 1149 of 2015

This Letters Patent Appeal is directed against the order dated 27.11.2013 whereby learned Single Judge has set aside the order of recovery passed against the respondents after their retirement, on the ground that while in service they were granted

selection grade erroneously and the excess amount paid to them was thus liable to be recovered.

[2]. The appellant – State filed a review application after delay of about 259 days. Learned Single Judge condoned the delay but vide order dated 16.01.2015 has dismissed the review application reiterating that the State can not be permitted to effect recoveries sought to be made after more than 5-6 years of retirements.

[3]. The respondents served as Sub Divisional Engineers in the Irrigation Department and as per their service record given in Tabulated Form [P-1], they retired on superannuation on different dates ranging from September, 1989 to October, 1999. All of them stood retired much before the year 2000.

[4]. The recovery orders were passed against the respondents on different dates but much after their retirement on the ground that while in service they were granted the selection grade wrongly. Such recovery orders were passed at least five to six years after retirement and in some of the cases even after ten to twelve years.

[5]. It appears that while admitting the writ petition, stay of recovery was passed. Learned Single Judge vide order dated 27.11.2013 allowed the writ petition relying upon the judgment of Hon'ble Supreme Court in **Chandi Prasad Uniyal Vs. State of Uttarakhand, [2012] 8 SCC, 417.**

[6]. Learned State Counsel reiterates that since the selection grade was inadmissible to the knowledge of the respondents, the excess amount drawn by them due to grant of that benefit deserves

to be recovered.

[7]. We, however, do not find any substance in the contention. After **Chandi Prasad Uniyal's case [supra]**, the controversy has been set at rest by the Apex Court in **State of Punjab & Ors. Vs. Rafiq Masih etc. [2015] 4 SCC, 334** laying down that while 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 but there are certain circumstances and situations wherein recoveries by the employer would be impermissible in law. One of the such category of employees identified by the Hon'ble Supreme Court is of retired employees or those who are due to retire within one year of order of recovery. In the instant case, all the respondents stood retired years back before the recovery orders were passed. Their claim is, thus, squarely answered by the above cited decision.

[8]. We find no merit in this appeal which is accordingly dismissed.

(SURYA KANT)
JUDGE

August 04, 2015.
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(P.B.BAJANTHRI)
JUDGE