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

CM No.6209 of 2014 in/and
RA No.303 of 2014 in
CWP No.4307 of 2008
Date of decision:08.01.2015

Mussadi Lal Garg

....Petitioner

Versus

Haryana Agro-Industries Corporation Ltd. & another

......Respondents

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

Present: Mr.Pankaj Gupta, Advocate, for applicant-respondents.

Mr.R.K.Malik, Sr.Advocate
with Mr.Ramandeep Singh, Advocate, for non-applicant/petitioner.

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**G.S.Sandhawalia J.(Oral)**

CM No.6209 of 2014

Application for condonation of delay of 14 days in filing the review application, has been filed.

Counsel for the non-applicant/petitioner does not oppose the same.

Accordingly, for the reasons mentioned in the application, the same is allowed and delay of 14 days in filing the review application is allowed.

RA No.303 of 2014 in CWP No.4307 of 2008

Counsel for the applicant/respondent-Corporation has submitted that the order passed by this Court dated 26.02.2014 is liable to be reviewed since it had been wrongly pointed out by counsel for the petitioner that the petitioner retired on 30.05.2009. He submits that the petitioner was ordered to be removed from the service on account of a regular departmental enquiry and recovery of ₹16.35 lacs/- along with interest was ordered to be recovered from his retiral dues. The petitioner had preferred an appeal against the order of removal dated 05.04.2007 and his removal from service had been set aside and stoppage of 2 annual grade increments with cumulative effect besides recovery of ₹16.35 lacs/- was ordered. He challenged the said order dated 19.04.2008 in CWP No.5277 of

2008, which stands admitted for regular hearing. It was further submitted that vide order dated 20.05.2009, removal from service had been ordered on account of causing loss of ₹4,33,362/- in another charge sheet dated 04.04.2006. Thus, apparently, the fact remains that the petitioner is no longer in service. Reliance has been placed by the counsel for the applicant, upon the judgment passed in ***U.T. Chandigarh & others Vs. Gurcharan Singh & another 2013 (14) JT 203*** to submit that excess amount can be recovered, if it had been paid by mistake.

Learned Sr.Advocate, for the non-applicant/petitioner, on the other hand, has relied upon the recent judgment delivered by the Apex Court in **CA No.11527 of 2014** titled *State of Punjab & others Vs. Rafiq Masih (White Washer) & others,* decided on 18.12.2014, wherein principles have been laid down that recovery would be impermissible in law from persons, in certain cases. Relevant observations read as under:

> "(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.
>
> 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."

As noticed, vide the judgment, which is now sought to be reviewed, this Court had taken into consideration the judgments of the Apex Court in ***Col. (Retd.) B.J.Akkara Vs. The Government of India & others 2006 (11) SCC 709***, ***Syed Abdul Qadir Vs. State of Bihar 2009 (2) RSJ 416*** and ***Chandi Prasad Uniyal & others Vs. State of Uttarakhand & others (2012) 8 SCC 417*** and keeping in view the factum that recovery was on account of advanced increments which had been directed to be paid vide the order dated 24.04.1986, on account of exceptionally good work done by the petitioner for settling the accounts with dedication and devotion. The advance increments were to be adjusted in future increments and he continued to draw the said increments without any adjustments from the year 1986 till the recovery notice was issued on 01.05.2007, which is apparently only after the removal order was passed on 05.04.2007, as would be clear from para 9 of the present review application. The mistake was on the part of the office who had failed to adjust the amount and paid the extra amount for over 20 years and thus, there was no misrepresentation or concealment by the petitioner.

Thus, it is apparent that the respondent-Corporation was launching a witch hunt against the petitioner and was trying to rake up all issues, since even thereafter, a subsequent order of removal was passed on 20.05.2009. In such circumstances, clauses (iii) & (v) would come into play, as laid down in in the case of **Rafiq Masih** (supra) and this Court is of the opinion that the recovery on the basis of the order dated 11.07.2007 (Annexure P7) is not justified.

In such circumstances, there is no scope for reviewing the order dated 26.02.2014 and the same is, accordingly, dismissed.

08.01.2015 (G.S.SANDHAWALIA)
**sailesh** JUDGE