

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

CWP No. 11884 of 1996
Date of Decision: 2.6.2016

Smt.Nirmal Kanta

... Petitioner

Versus

State of Punjab and Others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.V.K.Jindal, Advocate for the petitioner

Mr.Harkesh Manuja, Addl.A.G., Punjab

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. The challenge in this case is to the recovery order. The impugned order qualifies as a “deaf, dumb and blind order” in the sense it was passed without hearing; it does not speak the mind of the authority competent to pass the order and it neither contains reasons. What is worse still is that it has been passed after this Court quashed the recovery order impugned in CWP No.1588 of 1995 filed by the petitioner against an earlier recovery order passed again behind his back and the respondents in the case were given liberty to recover the amount after issuing show-cause notice to the petitioner. In view of the order of the Division Bench dated 23rd August, 1995, it was inherent, though not specifically worded, that the petitioner would be heard on the show-cause notice, and thereafter the order would be passed. It was also inherent in the passing of the order that meaningful reasons will be given admitting or denying

the claim of the petitioner so that when the order came

under judicial scrutiny it could be reviewed. This Court has no doubt in its mind that the impugned order dated 14/27.12.1995 has to be set aside again for the same infirmities it suffered from earlier.

2. The question is; should the case be remitted again to comply with the principles of natural justice after 20 years? I think not, since the issue of recovery is now well settled by the Supreme Court in *State of Punjab and others etc. vs. Rafiq Masih etc.*, AIR 2015 SC 696, and by following the binding dictum in the precedent, the impugned recovery order cannot be sustained, and therefore, the reduction in salary to defray an amount of Rs.58,838/- is not payable any longer by the petitioner to the State. To accept Mr.Manuja's argument that on quashing of the impugned order, the authority should be directed to pass a fresh order after hearing the petitioner appears to this Court, to be a tribute to empty formality after passage of so many years especially when the matter is covered by the judicial precedent in *Rafiq Masih, surpa* such a course deserves not to be adopted to prolong the agony of the petitioner. Instead of abdicating authority the Court intervenes to close the dispute.

3. As a result, the writ is allowed. The impugned order is quashed and thereby the recovery which is nullified by issuing certiorari. The amount in dispute is held non-recoverable. Any amount recovered from the petitioner so far will be refunded to her within two months from the date of receipt of a certified copy of this order.

4. In view of the declaration of rights as above having been rendered in 2015 clarifying the legal position settled in *Rafiq Masih* and by applying the exclusionary principles from recovery rights of Government summarised in the judgment on mistaken over-payments of money in different situations it would

not be equitable to award interest on those amounts against the State as claimed.

5. The writ petition is allowed in the above terms.

2.6.2016

MFK

(RAJIV NARAIN RAINA)
JUDGE