

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

CWP No.14759 of 1997 (O&M)

Date of Decision: 19.5.2016

Balwinderjit Singh Bajwa

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr.R.S.Bajaj, 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 petitioner was given an option in the order admitting the petition dated 10th December, 1997 to choose between one of the two situations; he could either refund the arrears received by him to the State Government or in case he succeeded the State would pay back the money with 18% interest. In case the petitioner does not refund the arrears and the writ petition is dismissed, the State would be entitled to recover the entire amount with 18% interest. Mr. Bajaj submits that the petitioner opted for the second situation and the amount of recovery remained with him.

2. The claim in the petition involves recovery of a sum of Rs.81,950/- from the petitioner on account of release of higher pay on acquiring post graduate qualification in terms of the circular dated 23rd September, 1997, but the Scheme of the Punjab Government issued vide letter dated 23rd May, 1957 read with letter dated 20th September, 1979 permitted grant of higher pay scales

for acquiring higher qualification which in the case of the petitioner was a post graduate degree. The petitioner has come against the impugned order of recovery dated 23rd September, 1997 (Annex. P-4). Even after an adverse order was passed against the interest of the petitioner, but pursuant to the directions of this Court in CWP No.1542 of 1997 calling upon the respondents to decide the representation of the petitioner preferred along with other affected employees, the Director Public Instructions, Punjab had granted higher pay scale to the petitioner alongwith other employees vide an order dated 13th May, 1997 (Annex.P-2), but the said order of the Director, Public Instructions, Punjab was tinkered with by a lower functionary i.e. the District Education Officer (S), Jalandhar. Be that as it may, the issue of recovery is no longer *res integra* as it stands settled by the judgments of the Supreme Court. In State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 696, it has been directed by the Supreme Court that no recovery would be made in the circumstances summarized in the judgment. See also the decision of the Supreme Court in Chandi Prasad Uniyal and others vs. State of Uttarakhand and others, (2012) 8 SCC 417. The petitioner was granted the benefit of higher pay scale when he acquired higher qualification in 1975 while he was in service. The right accrued and the cause of action became protected in 1975 when the petitioner was granted higher pay scale retrospectively. Rights of the petitioner accrued two decades prior to the filing of the impugned order and more than 5 years before the filing of the writ petition for setting aside the impugned order. Therefore, the case of the petitioner would broadly fall within the protective shield delineated in *Rafiq Masih* and *Chandi Prasad Uniyal* cases (*supra*). Besides, the DPI, Punjab had granted the pay scale which was withdrawn by an authority not competent to review the order and that too without hearing the petitioner.

3. As a result of the foregoing reasons recorded, this petition is allowed and the impugned recovery order dated 23rd September, 1997 is set aside. In view of exercise of the second option no further directions are required.

19.5.2016

MFK

(RAJIV NARAIN RAINA)
JUDGE