

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

CWP No.10861 of 2012

Date of decision: 13.5.2016

Pawan Kumar

... Petitioner

Versus

The Pepsu Raod Transport Corproation & anr.

... Respondents

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

Present: Mr. Vikas Singh, Advocate,
for the petitioner.

Mr. Karan Singla, Advocate,
for the respondents.

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 has approached this Court against the recovery orders which demand a sum of Rs.59,007/- from him to be deducted in installments @ Rs.2000/- per month. The only reason given out to disadvantage the petitioner is that pay fixation was due to wrong fixation of salary w.e.f January 1, 1996 and accordingly salary was refixed vide order dated February 8, 2012 reducing his pay and therefore pension being a retired employee. No reason has been assigned in the impugned order dated April 3, 2012 (Annex P-1) as to how wrong fixation was done. The order is passed without hearing, without reason.

2. In the written statement filed by PRTC a new story is spun to the effect that the petitioner did not possess the qualification equivalent to one Faggan Singh Fitter. Faggan Singh was an ITI diploma holder but the petitioner had no requisite qualification. It was assumed by the

authority empowered to decide that the petitioner misstated that he held the diploma in ITI. However, this reason was not made explicit in the impugned order. If the petitioner had made such a statement then his writing to that effect amounting to an admission of falsehood has not been produced on the file. Nothing has come on the file to substantiate the assertion of PRTC that a misstatement was made and on the basis of which wrong payment was done in excess of entitlement and therefore recoverable from pension. Moreover, the impugned order is non-speaking and has been passed in violation of the principles of natural justice. No hearing was given to the petitioner before the recovery was ordered.

3. In any case, the fixation was done long ago in the year 1996 and by passage of time the petitioner, a retiree in Class III service stands protected by the decision of the Supreme Court in State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 that no recovery can be made for a period in excess of five years before the order of recovery is issued for payments made mistakenly in excess of legitimate dues. The impugned order is therefore hit by directions (i) & (iii) contained in para 12 of *Rafiq Masih 's case(supra)*. The petitioner was a fitter in Group C when he retired and belongs to the low paid category of employees. Direction (i) in the aforesaid judgment protects recovery against Group C & D employees.

4. As a result of the sequence of events as above and the law applicable on the subject recovery, the impugned order is found not sustainable in law and is thus liable to be quashed.

5. Consequently, the petition is allowed. A writ of certiorari is

issued quashing the impugned order (Annex P-1). As a corollary, a writ of mandamus is issued to the respondents to refund the amounts of money recovered so far from the pension of the petitioner and to credit those amounts into his pension account within two months from the date of receipt of a certified copy of this order. The principal amount computed will earn interest @ 6% per annum for the period of usurpation of money without authority of law.

(RAJIV NARAIN RAINA)
JUDGE

13.5.2016
monika