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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.13713 of 2012
Date of decision: 10.3.2016

Neelam Kumari **...Petitioner**

Versus

The State of Punjab and others **...Respondents**

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

Present: Mr. T.S.Chauhan, Advocate for the petitioner

Mr. Avinit Avasthi, Assistant Advocate General, Punjab

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G.S.SANDHAWALIA, J (Oral)

The petitioner challenges order dated 10.6.2011 (Annexure P/5) whereby a sum of ₹ 77,588/- has been recovered from the gratuity of the petitioner.

A perusal of the said order would go on to show that the recovery was made on account of withdrawal of proficiency step up with effect from 4.4.1995 in view of letter dated 24.3.2011.

It is not disputed that the petitioner had retired on 31.8.2010 as Senior Assistant and at the time of payment of retiral dues, the recovery had been effected.

In the written statement filed, also it has been mentioned that on account of the returning of the pension papers by the Accountant General, Punjab, the benefits were withdrawn which she was drawing from 4.4.1995 on the ground that she was not entitled to the same.

Counsel for the petitioner restricts his challenge to the recovery only and submits that in view of the judgment of the Apex Court in **State of Punjab Vs. Rafiq Masih etc. (2014) 8 SCC 883**, the said order is

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not sustainable.

The State has relied upon the judgment of the Apex Court in **Chandi Prasad Uniyal & others Vs. State of Uttarakhand & others (2012) 8 SCC 417.**

However, the said judgment has been considered in **Rafiq Masih's case** (supra). The petitioner admittedly was drawing the said amount for 15 years prior to the date of retirement and recovery was done at the stage of superannuation. Nothing has been mentioned that it was on account of fraud or misrepresentation on behalf of the petitioner. The observations of the Apex Court and principles laid down in ***Rafiq Masih (supra)*** read as under:-

> "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. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
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> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (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.
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> (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

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> would far outweigh the equitable balance of the employer's right to recover."

Keeping in view the above principles and the above factual facts, this Court is of the opinion that the recovery from the petitioner, in such circumstances is not justified. Accordingly, recovery order dated 10.6.2011 (Annexure P-5) is quashed. The State is directed to refund the amount recovered along with interest at the rate of 7% per annum from the date of recovery till its realisation within a period of two months. In case of non compliance the interest will be paid at the rate of 10% per annum.

With the aforesaid direction, the present writ petition is disposed of accordingly.

March 10, 2016 **(G.S.SANDHAWALIA)**
Pka **Judge**