

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

Civil Writ Petition No.4069 of 2009 (O&M)

Date of decision: 18.1.2016

M.K.Sood

... Petitioner

Versus

Punjab Agricultural University and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ankur Ghai, Advocate,
for the petitioner.

Mr.Deepak Agnihotri, Advocate,
for respondent No.1.

Mr.Inqulab Nagpal, AAG, 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 claim in this writ petition is for refund of money recovered from the petitioner allegedly as excess paid by mistake by the respondent University. Interest is also claimed on the amount on reimbursement.

2. On account of this alleged over-payment of money to the petitioner, a retired employee, the third respondent, i.e., the Deputy Controller Local Audit, Punjab Agriculture University, Ludhiana and respondent No.2-State of Punjab had put the spanner in the works by demanding a sum of ₹ 2,08,482/- from the petitioner on account of over

payment in salary paid. It appears that Punjab Agriculture University and the Deputy Controller Local Audit posted at the University are not in tandem on the moot issue. The amount has been recovered on an audit objection raised by the third respondent. The Deputy Controller Local Audit is an officer of the Punjab Government deputed to the University by the State Government to conduct audit of accounts since the University is financed by the State of Punjab. The petitioner retired from service on 31.8.2007. In order to get his retirement benefits, the petitioner was compelled to deposit the money called for, on pain of being denied pension and other retirement benefits unless the amount was deposited with the university. The issue of recovery of money due to mistaken payment, in cases where employee is not at fault or has not practiced deceit, fraud or misrepresentation, is covered by the decision of the Supreme Court in **State of Punjab v. Rafiq Masih and others; (2014) 8 SCC 883** in which the following situations have been excluded altogether from recovery: -

- (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.

3. In view of **Rafiq Masih** [supra], this petition is allowed. The decision of the third respondent is quashed. The University is directed to reimburse the amount to the petitioner within 30 days from the date of receipt of a certified copy of this order. Since the money has been recovered illegally and retained since the year 2008 [even in the face of the Full Bench decision of this Court delivered in **Budh Ram v. State of Haryana and others**, 2009 (3) SCT 333, the petitioner would be entitled to interest @ 12% on the principal amount to be paid by the first respondent in the first instance and be recoverable from the third respondent who was responsible for making the illegal recovery. However, recovery can only be effected from the person who passed the order of withholding the amount, after holding an inquiry against him in which case he would have a right to be heard as to why interest component should not be saddled on him personally.

(RAJIV NARAIN RAINA)
JUDGE

January 18, 2016

Paritosh Kumar