

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

**CWP No.11775 of 2015
Decided on : 02.03.2016**

Nahar Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

(2)

CWP No.11906 of 2015

Malkiat Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present : Mr. Sukhdeep Singh Sidhu, Advocate
for the petitioner (s).

Mr. Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of two writ petitions
i.e. ***CWP No.11775 and 11906 of 2015***. The facts are being taken
from ***CWP No.11775 of 2015 titled as 'Nahar Singh Vs. State of
Punjab and others'***.

The petitioner seeks the quashing of the impugned
order dated 26.05.2015 (Annexure P-3), whereby a sum of
₹47,957/- was sought to be recovered from the petitioner by

respondent No.4. The said recovery is on the basis of the re-fixation of pay scale from 1986.

It is the case of the petitioner that he was appointed as Steno Typist on 13.12.1978 with the Department of Agriculture, Punjab. The pay of the petitioner was fixed on the revision of grades and he was granted proficiency step up and ACP from time to time, keeping in view his good service record.

It is pertinent to mention that the petitioner has retired on 29.02.2016. He received a show cause notice dated 02.03.2015 (Annexure P-1), whereby the recovery of the said amount was sought to be made on the ground that after 01.01.1986 at the time of grant of Senior Selection Grade, one increment or more than one benefit was granted to him and, therefore, the amount was to be recovered.

It is the case of the petitioner that he had filed reply on 10.03.2015 and taken the plea that instructions had been issued not to effect recoveries. Reliance had been placed upon various orders of the Apex Court. Thereafter, the impugned order was passed. Resultantly, the petitioner approached this Court and the recoveries were stayed vide order dated 29.05.2015.

In response, the State has admitted the fact that the petitioner has been getting the benefit from 13.12.1986 to 31.07.2013. Though he was not entitled for the same.

Resultantly, the pay had been refixed w.e.f. 08.08.2013.

Counsel for the petitioner at the outset submits that he does not challenge the re-fixation and is accordingly aggrieved only against the recovery element. He relies upon the judgment of the Apex Court in '**State of Punjab Vs. Rafiq Masih etc' (2014) 8 SCC 883** to submit that when the recovery was being effected, he was at the fag end of his career and he has now retired on 29.02.2016. The amount was being paid for more than 5 years and it is not the case of the respondents that it is on account of mis-representation or fraud on his part and fixation had been on the account of the department. The said contention is meritfull and the petitioner's case is squarely covered by the observations of the Apex Court. The observations of the Apex Court and principle 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:

(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.”

Keeping in view the above principle 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 26.05.2015 (Annexure P-3) is quashed.

It is made clear that this Court has not modified the order of re-fixation of pay.

Accordingly, the writ petitions are partly allowed and are accordingly disposed of.

MARCH 02, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE