

and while counting such period of service rendered by him, the service rendered on ad hoc basis between 22.04.1975 till 01.01.1980 was also counted.

After his retirement, while releasing the gratuity payable to the petitioner, the respondents deducted an amount of ₹ 41,732/- on the ground that in the year 1994, when the petitioner had been given the benefit of two additional increments, he was wrongly granted the benefit of the period of ad hoc service rendered by him. After deducting that period of service, his pay was re-fixed and the resultant recovery was made from the total amount of gratuity payable.

Learned counsel for the petitioner does not challenge the re-fixation of pay and restricts his prayer to the recovery effected from the petitioner's gratuity.

In view of the authoritative pronouncement in the judgment of the Apex Court in **State of Punjab and others vs. Rafiq Masih (White Washer) etc. - (2015) 2 SCC 608**, no recovery could have been made from the gratuity payable to the petitioner, a Class III employee, after his retirement and for increments released in his favour way back in the year 1994. The relevant portion of the judgment to this effect is reproduced hereunder :-

“12. 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. **[Emphasis supplied]**”*

A perusal of the afore-quoted directions by the Apex Court shows that the petitioner, being a Class-III employee, the recovery being effected after his retirement and for a financial benefit released more than five years before the impugned recovery, clearly brings his case within the category of persons, from whom no recovery can be made. That being so, directions are issued to the respondents to release the amount of ₹ 41,732/- withheld from the petitioner's gratuity.

The needful be done within three months from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

April 29, 2016
monika