

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

**CWP No.17528 of 2014
Date of decision: 05.05.2016**

Surinder Malhotra

...Petitioner

versus

District & Sessions Judge, Sri Muktsar Sahib and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Surinder Garg, Advocate,
for the petitioner.

Mr. Jaivir Chandail, Advocate,
for respondent No.1.

Mr. Jangsher Singh Bhullar, DAG, Punjab.

RITU BAHRI, J.

The petitioner is seeking direction to the respondents to fix his pay after deducting one increment out of the three increments given to him w.e.f. 04.03.2009.

In the year 2009, the petitioner was promoted as Senior Scale Stenographer, Grade-I. At the time of promotion, instead of two increments, he was inadvertently granted three increments. Thereafter, he was transferred

from Sessions Division, Faridkot to the new Sessions Division, Sri Muktsar Sahib. On 05.01.2011, the petitioner made an application (Annexure R-1) before the District & Sessions Judge, Sri Muktsar Sahib stating that one excess increment has been given to him. Pursuant to the said application, District & Sessions Judge, Sri Muktsar Sahib, vide letter dated 28.04.2011 (Annexure R-1/2), requested the District & Sessions Judge, Faridkot to re-fix the pay of the petitioner and recover the excess amount.

However, after re-fixation of pay of the petitioner, the next annual increment which was due on 01.04.2011 was not disbursed to him on the ground that he had already withdrawn the excess payment at the time of promotion in 2009. The pay of the petitioner was re-fixed vide order dated 02.09.2011 (Annexure P-2) and recovery of Rs.5748/- was to be effected from him. Thereafter, service book of the petitioner was sent from Faridkot to Sri Muktsar Sahib and his pay was re-fixed vide order dated 05.03.2012 (Annexure R-1/3). The petitioner, in the meantime, sought voluntary retirement, which was accepted by the respondents and he stood retired on 31.05.2013. After his retirement, recovery of Rs.22,455/- has been effected from his gratuity.

Precise grievance of the petitioner is that on one hand, the respondents have withdrawn the additional increment granted to him at the time of promotion in 2009 and at the same time, did not disburse the increment which fell due on 01.04.2011. They have wrongly merged the additional increment granted while re-fixing the pay in 2011.

After going through the contents of the writ petition and written statement, it is not the case of the respondents that the payment of additional increment was made to the petitioner on account of any

misrepresentation made by him. It is the mistake, which had been committed by the respondents themselves at the time of his promotion in 2009. After re-fixation of the pay, recovery could not be effected from the petitioner keeping in view the judgment passed by the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.** 2015 AIR (SC) 696.

In view of the above, this petition is allowed and the respondents are directed to pass a fresh order with regard to fixation of pay of the petitioner after withdrawing the benefit of extra increment which was granted to him in the year 2009 and thereafter, give the benefit of this increment w.e.f. 01.04.2011.

05.05.2016
ajp

(RITU BAHRI)
JUDGE