

CWP No.17929 of 2014

KUMAR MANOJ
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.17929 of 2014

Date of Order: 27.2.2016

Dharam Pal

....Petitioner

Versus

State of Punjab and Others

....Respondents

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

Present: Mr. Amandeep Saini, Advocate for the petitioner.

Mr. Ashish Sharma, Addl.A.G, Punjab.

G.S. SANDHAWALIA,J (ORAL)

The petitioner seeks quashing of the order dated 03.1.2014 (Annexure P.1) and 19.3.2014 vide which the pay of the petitioner was re-fixed due to the withdrawal of special increments w.e.f 01.12.1994 till the date of his retirement i.e 30.4.2013.

Learned counsel for the petitioner, at the outset, has stated that he does not press his challenge to the order regarding re-fixation of the pay and restricts his prayer to the relief of recovery as per order dated 19.3.2014 (P.3) whereby a sum of Rs.2,34,190/- has been recovered, from him at the time of retirement.

The petitioner, who was working as Beldar at Shahpur Kandi Dam Project, District Gurdaspur, had been allowed special increments during his service. At the time of his retirement i.e on 30.4.2013 while processing his pension case, respondent No.3-Accountant General (A & E), Punjab had raised an objection with regard to re-fixation of the pay after reducing

special increments from the date of petitioner joining till the date of his retirement. Resultantly, order dated 03.1.2014 (Annexure P.1) was passed whereby the petitioner's pay was re-fixed and the gratuity was, thereafter, calculated to the tune of Rs.2,89,341/- on 14.2.2014 (Annexure P.2). However, vide impugned order dated 19.3.2014 (Annexure P.3), deduction of Rs.2,34,190/- was made and the petitioner was held liable to be paid amount of Rs.55,151/-.

Respondents-State in their written statement has justified the deduction on account of re-fixation.

Admittedly, the petitioner had been receiving the amount for a long period of time and the direction has been made now at the fag end i.e at the time of his retirement. The petitioner's case is then squarely covered by the judgment of Hon'ble Apex Court reported as **State of Punjab Vs. Rafiq Masih etc (2014) 8 SCC 883** whereby recovery is not to be effected from Class III & IV employees and specially effecting of recovery at the time of retirement has been held not to be justified. Relevant observations 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.”

Resultantly, the present writ petition is allowed. The respondents are directed to refund Rs.2,34,190/- to the petitioner within a period of two months along with interest at the rate of 8% per annum from the date of receipt of certified copy of the order. It is made clear that the challenge in respect of re-fixation has been given up in this case.

February 27, 2016
manoj

(G.S. SANDHAWALIA)
JUDGE