

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

**CWP No. 26899 of 2014
Date of decision : 22.11.2016**

K. R. Sharma

.....Petitioner

v.

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. Jai Bhagwan Sharma, Advocate, for the petitioner

Mr. Rajesh Gaur, Addl. AG, Haryana

Mr. Vishal Gupta, Advocate, for respondent No. 2

Anupinder Singh Grewal, J. (Oral) :

The petitioner has challenged the order dated 17.9.2014 (Annexure P-1), whereby his pay has been re-fixed and recovery is sought to be effected from him.

Learned counsel for the petitioner states that the petitioner was working as Chief Manager (P & A) in Haryana Seeds Development Corporation and vide order dated 1.7.2013, he was granted additional increment. He had superannuated on 30.6.2014 and the impugned order has been passed on 17.9.2014, whereby his pay has been reduced and recovery is being effected from him.

I have heard learned counsel for the parties and am of the considered view that the impugned order dated 17.9.2014 for effecting recovery is clearly unsustainable in law. It has been held by the Supreme Court in the

case of “**State of Punjab and others v. Rafiq Masih, 2015 (4) SCC 344**” that although it is open to the employer to recover the over payment made to an employee but five exceptions have been carved out wherein the recovery would be impermissible in law. The exceptions are as under :-

- “(i) Recovery from the employees belonging to Class III and IV service (or Group C and D service)
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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 recovery.”

In the instant case the petitioner had already retired from service when the impugned order was passed and therefore, his case would fall in the exception (ii) in the case of **State of Punjab and others v. Rafiq Masih (supra)**.

Consequently, the petition is allowed and the impugned order dated 17.09.2014 (Annexure P-1) is set-aside.

(ANUPINDER SINGH GREWAL)
JUDGE

22.11.2016
Ashwani

Speaking/Reasoned
Reportable

Yes
Yes/No