

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9112 of 2012 (O&M)

Date of Decision: 26.09.2016

Asa Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. A.P.S. Mann, Addl. AG, Punjab.

Mr. Amit Chaudhary, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. The State has claimed recovery of an amount of ₹ 41,520/- for mistaken overpayment at the time of fixation of salary on pay revision. The petitioner is a pensioner. He retired in February 2008. The present petition has been filed in the year 2012 with a prayer for quashing the recovery order dated September 22, 2008 and the order dated January 19, 2012 wrongly showing outstanding amount of Rs.35,641/- recoverable from him on account of overpayment due to re-fixation of pay and for a direction to the respondents to refund the amount recovered along with interest @12% per annum.

2. Mr. Sanjiv Gupta, learned counsel for the petitioner submits that the amount ₹ 41,520/- remains due balance after recovery was effected from the salary which already stood recovered. Therefore, the prayer for

refund of the amount has been made. Mistaken payments and rights of recovery have been explained in State of Punjab and others vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 696. The recovery was made from pension and pensionary dues at the time of superannuation. The wrong fixation goes back to the year 2008 but the amounts were determined in 2012 for the first time on audit which led to recoveries from the terminal benefits of the petitioner. The petitioner does not dispute that there was overpayment in excess of rights but there was no fault of the petitioner neither he practiced any deceit or tried to defraud the Government since payments were made voluntarily by the department in salary from the intervening amounts and years. The money was put into his account and deducted from it at the time of retirement on superannuation.

3. Presently, Mr. Sanjiv Gupta, confines his prayers save and limited to setting aside of recovery to the extent of ₹ 41,520/- which remains pending due to the interim motion order passed by this Court on May 16, 2012 while issuing notice of motion and staying the recovery by an ad interim order. This part of the recovery cannot be made from the petitioner in view of the law in *Rafiq Masih* and consequently this petition is allowed to the limited extent and the interim order is made absolute.

(RAJIV NARAIN RAINA)
JUDGE

26.09.2016

manju

Whether speaking/reasoned

Yes

Whether reportable

No