

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

**CWP No.4634 of 2016**

**Date of Decision: 11.03.2016**

Dr. Parampal Singh Coonar

... Petitioner

Versus

State of Punjab and another

... Respondents

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

Present: Mr. A.D.S. Bal, Advocate,  
for the petitioner.

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

**RAJIV NARAIN RAINA, J.(Oral)**

1. The petitioner superannuated in 2011. He retired as a Professor from Govt. Medical College, Patiala after rendering 35 years of service. He was paid gratuity in a sum of Rs.10 lacs on March 31, 2011 but a sum of Rs.1,62,182/- was deducted from gratuity due to erroneous pay fixation done in 1996 when he drew according to the respondents higher pay from January 01, 1996 to January 31, 2011. The department took recourse to recover money from the petitioner without issuing show cause notice or hearing the petitioner and passed the impugned recovery. The recovery has been made surreptitiously and behind the back of the petitioner. The issue involved is recovery based on mistaken payment but the fault was of the Government committed in 1996 for which the petitioner cannot be faulted as he practiced no deceit or fraud to obtain higher salary. As a result, the last pay drawn is also erroneous since the recovery cannot be made in view of

the law settled in **State of Punjab v. Rafiq Masih**, (2015) 4 SCC 334 where the Supreme Court has guided in para.12 (ii) of the judgment that no recovery can be made from retired employees as follows:-

*“(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.”*

2. Issue notice of motion on the petition to the respondent State as to why the same be not accepted.

3. On the asking of the Court, Mr. Inqulab Nagpal, AAG, Punjab accepts notice on behalf of the respondents and waives service on them. Copy of the petition has been handed over to the law officer for Punjab.

4. There is no need to call for reply from the State when it was a party in *Rafiq Masih* and requires no further hearing State on a proposition settled by the highest Court. In the presence of the binding decision of the Supreme Court, all civil and judicial authorities have to act in aid of the Supreme Court and promptly so that valuable rights of Government servants are restored to them. It will also serve no useful purpose to issue a direction to the respondents to decide the representation only to achieve the same result as can be achieved today.

5. Consequently, the petition is allowed. A writ of certiorari is issued quashing all adverse decisions/actions of the Government in illegally deducting an amount of Rs.1,62,182/- from the gratuity of the petitioner which was a patent wrong committed by the department. As a corollary, a writ of mandamus is issued to the respondents to return the deducted amount into the pension account of the petitioner forthwith together with interest at the current rates fixed by Nationalized Banks on Fixed Deposit

Receipts from the date of deduction till realization. Accordingly, The

element of interest be computed and added to the principal amount before  
disbursement to the petitioner.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**11.03.2016**  
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