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

C.W.P. No.5136 of 1993

Date of Decision : 21.02.2017

Rameshwar and others

..... Petitioners

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.K. Gupta, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl.A.G., Haryana.

AJAY TEWARI, J. (Oral)

Prayer in the present petition is for issuance of directions to the respondents is to not recover the amount paid to the petitioners on account of wrong fixation of pay without any fault of them.

At the very outset, learned counsel for the petitioners states that he does not wish to press the prayer regarding change of pay-scales.

As regards the recovery of amount, the learned counsel for the petitioners states that case of the petitioners is covered by the decision of the Supreme Court in the matter of ***State of Punjab and others vs. Rafiq Masih (White Washer) etc., 2015 AIR (SC) 696***, whereby in the following situations the recovery has been held to be impermissible:-

(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 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 another 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 outweigh the equitable balance of the employers right to recover.

Learned Additional Advocate General is not in a position to cite any contrary judgment.

It is also pointed out by the learned counsel for the petitioners that by way of interim order dated 06.05.1993 the recovery has been stayed.

In the circumstances, the petition stands allowed and the interim order dated 06.05.1993 is made absolute. The respondents are directed to not recover any amount from the petitioners.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

February 21, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No