

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

**CWP-1112-2014 (O&M)
Date of decision: 18.12.2017**

Kulwant Kaur

... Petitioner

Vs.

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. R.K. Arya, Advocate for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Pleadings on record would indicate that the petitioner joined the respondent/Revenue Department, State of Punjab as Clerk on 26.10.1982. She thereafter earned promotions to the post of Junior Assistant and Senior Assistant on 01.01.1996 and 16.07.2010 respectively.

Challenge in the instant petition is to order dated 25.11.2013 (Annexure P-1) passed by the Deputy Commissioner, Gurdaspur and whereby recovery of certain alleged excess amount made to the petitioner on account of grant of two increments upon completion of 9 and 14 years of service has been directed.

Petitioner concededly retired on 30.06.2012 upon attaining the age of superannuation.

The short question that arises for consideration in the instant writ petition is as to whether the payment that had been released to a Class III employee (Group 'C' post) and to which such an employee may not be otherwise entitled to, can be recovered post retirement?

The question formulated herein above is no longer *res integra*.

The Hon'ble Supreme Court in **State of Punjab & others Vs. Rafiq Masih (White Washer) etc. 2015 (1) RSJ 177** had considered the issue of recovery from employees where payments have mistakenly been made by the employer in excess of their entitlement and had culled out certain situations where recoveries at the hands of employer were not permissible. Para 12 of the judgment in **Rafiq Masih's case (supra)** would be relevant and is reproduced hereunder:

“12. 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 recovery.”

It may be taken note of that it is not the stand on behalf of the State that the petitioner had been released financial benefits on account of any misrepresentation on her part.

State counsel on a previous date of hearing i.e. on 25.04.2017 had raised a contention that in case the petitioner while claiming the benefits had furnished an undertaking that she would return the benefits in case found not entitled to the same, it was open for the State to effect recovery. In support of such contention, reliance was placed upon a subsequent decision of the Apex Court in **High Court of Punjab & Haryana & others Vs. Jagdev Singh, AIR 2016 SC 3523**.

Taking note of such contention, filing of a specific affidavit had been directed by this Court clarifying as to whether any such undertaking had been furnished by the petitioner herein at the stage of release of the financial benefits and which are now sought to be recovered vide impugned order at Annexure P-1.

In compliance of the directions of this Court, a short affidavit dated 04.12.2017 of the Deputy Commissioner, Gurdaspur has been placed on record and in which it had been deposed to the following effect:

“That the case of the petitioner for Assured Career Progression Scheme on completion of 9 and 14 years service was considered by this office and same benefits were sanctioned to the petitioner vide this office no.3226-29/EA, dated 31.05.2013. it is submitted that the petitioner has not furnished the undertaking that she would return the amount if she is not found entitled for to the same and the State can make recovery.

*Place: Gurdaspur
Dated 4-12-2017*

*Respondents.
(Gurloleen Singh Sidhu, IAS)*

*Deputy Commissioner,
Gurdaspur.”*

In the light of such deposition made by the Deputy Commissioner, Gurdaspur, the action of the State to seek recovery vide impugned order dated 25.11.2013 (Annexure P-1) cannot sustain. The judgment of the Apex Court in **Jagdev Singh's case (supra)** would not apply.

Concededly, the petitioner was holding a Group 'C' post when she retired on 30.06.2012. The financial benefits that had been released to her during her service tenure was not on account of any fraud or misrepresentation on her part. Applying the dictum laid down in **Rafiq Masih's case (supra)**, recovery directed vide order dated 25.11.2013 (Annexure P-1) is held to be bad in law.

For the reasons recorded above, the writ petition is allowed. Order dated 25.11.2013 (Annexure P-1) is quashed.

Petition is allowed.

18.12.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No