

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

**CWP No. 11795 of 2015
Date of Decision: 13.01.2017**

Kanta Kumari

...Petitioner

Versus

State of Punjab & Others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S. S. Sidhu, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Article 226 of the Constitution of India for issuance of a writ of certiorari for quashing the impugned order dated 26.05.2015 passed by respondent No. 4 seeking to recover a sum of Rs. 1,08,168/- on account of refixation of pay scale.

The petitioner herein was appointed on 04.12.1975 as a Clerk and her services came to be regularized in the year 1977. During the period of her service, the petitioner was granted proficiency step up and ACP from time to time by the Government keeping in view her good record of service and as per the instructions of the Punjab Government. The petitioner was due to retire on 31.03.2015 which period was extended for one year and she eventually retired on 31.03.2016. She came to be served with a show cause notice (***Annexure P-1***) on 02.03.2015 seeking to recover a sum of Rs. 1,08,168/- for an increment given in 2006. On receipt of the said show cause notice, a reply was sent by the petitioner, in which it

was submitted that recoveries could not be made. Despite the same, the respondent No. 4-The Divisional Soil Conservation Officer, by order dated 26.05.2015, decided that recovery from the employee concerned is to be made. Aggrieved against the said order, the instant writ petition has been filed.

Counsel appearing on behalf of the petitioner relies upon the judgment rendered in *State of Punjab vs. Rafiq Masih etc., (2014) 8 SCC 883*, in which it has been held that no recovery can be made from an employee who has retired from service or when he himself is not responsible for the grant of alleged higher pay scale. It is also argued that by the impugned order, other persons were also affected and came to challenge the recoveries by filing *CWP No. 11775 of 2015* and *CWP No. 11858 of 2015* which have subsequently been allowed.

Counsel for the respondents-State argues that the pay of the petitioner had been refixed w.e.f. 08.08.2013 and, therefore, she was well aware that she had been getting excess amount. Hence, the impugned order seeking to recover the excess amount is wholly justified.

I have heard learned counsel for the parties and have perused the record of the case.

The petitioner herein is not seeking to challenge the refixation of her pay and is only challenging the recovery notice that had been issued upon her by placing reliance upon the judgment rendered in *Rafiq Masih's* case (supra) which has been followed while disposing of *CWP No. 11775 of 2015* and *CWP No. 11858 of 2015*. Admittedly, the petitioner herein has been given a higher pay scale which was sought to be refixed by order

dated 08.08.2013. At the time of refixation of her pay, there was obviously no fraud or misrepresentation on the part of the petitioner, nor is there any such allegation. As per the judgment rendered in ***Rafique Masih's*** case (supra), recovery is impermissible in case recovery from employee is made when the excess payment has been made for a period in excess of five years before the order of recovery is issued, as is in the present case. The petitioner can not be penalised on account of the wrong fixation of pay scale by the department. Therefore, the judgments, which have been relied upon, are wholly applicable to the present case. Resultantly, the present writ petition is allowed and the impugned order is set aside.

January 13, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No