

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

CWP No. 26252 of 2013

Date of decision: 11.05.2017

Kewal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Ms. Rajni Bala, Advocate, for
Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

JAISHREE THAKUR, J. (ORAL)

1. Additional affidavit has been filed by the respondents-State in the Court today, which is taken on the record.
2. The instant writ petition has been filed seeking to impugn the action of the respondents withholding a sum of of ₹ 1,20,575/- from the DCRG on account of recovery of over payment due to re-fixation of his pay w.e.f. 25.07.1978 which fact came to the notice of the petitioner in the reply (Annexure P-6) received by him in response to the legal notice dated 15.12.2012 (Annexure P-5) served by him upon the respondents.
3. The writ petition came to be filed on the ground that the recovery effected from the retiral benefits was wholly illegal and not sustainable. In fact, the pay of the petitioner was fixed as far back as 1978 and at that time there was no misrepresentation or fraud played by the petitioner. Reliance in this regard would be placed on a judgment rendered by this Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334* which specifically would bar any recovery to be

made from an employee in the following situations:

- “(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.*

4. Learned counsel appearing on behalf of the respondents-State submits that in a recent judgment reported as ***High Court of Punjab & Haryana & Ors. vs. Jagdev Singh, 2016(4)SCT 286***, recovery can be made from a retired employee, if he has given an undertaking while opting for and getting payment of arrears on account of revised pay scale to refund any excess payment made to him. The judgment of ***State of Punjab & Ors. vs. Rafiq Masih*** case (supra) would not be applicable in such a situation.

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

6. The petitioner herein has retired on 30.04.2010 and at the time of his retirement furnished an undertaking that at the time of claiming his retiral benefit if he gets any excess payment of any service benefit i.e. gratuity, pension, leave encashment etc. then he would be bound to return

the same along with interest. It is noted that this affidavit would be of no

benefit to the respondents since there was no undertaking furnished by the employee while he was given the benefits of re-fixation of his pay as far back as 1978. The judgment relied upon by Mr. Avinit Avasthi, learned AAG, Punjab visualises the situation where an employee claims certain benefit and at the time of claiming that benefit undertakes to refund any excess payment if it was so detected and demanded subsequently, which is not the case herein. The affidavit that has been relied upon by the respondents has been furnished only at the time of retirement.

7. The principles as laid down in *State of Punjab & Ors. vs. Rafiq Masih* case (supra) clearly make a recovery from an employee impermissible, if the recovery from an employee is sought which is for a period in excess of five years, recovery from retired employee or employees who are due to retire within a period of one year of the order of recovery. Both these instances are fully applicable to the petitioner herein and, therefore, this Court finds that the recovery by withholding an amount of ₹ 1,20,575/- from his death-cum-gratuity is wholly impermissible and the amount so deducted should be refunded to the petitioner along with interest @ 6% per annum from the date of his retirement till the amount is realised.

8. Let the needful be done within a period of two months failing which the interest stands enhanced from 6% to 9% per annum.

9. The writ petition stands disposed of.

11.05.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.