

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No.25628 of 2014  
DECIDED ON: OCTOBER 31, 2017

GURMAIL SINGH

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Dr. GKS Taank, Advocate,  
for the petitioner.

Mr. Manoj Bajaj, Additional Advocate General, Punjab,  
for respondents-State.

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**JASPAL SINGH, J.**

Challenge in this writ petition preferred under Article 226/227 of the Constitution of India is to the order/dispatch No.PEN-03/2181 325 3339/2014-15/PE/14/10/80050346 dated 21.04.2014 (P-1) passed by respondent No.5, whereby an amount of Rs.4,48,155/- has been ordered to be recovered from the petitioner with retrospective effect on the ground that during the period of suspension, government employee is not entitled to annual increment.

2. Learned counsel for the petitioner contends that the impugned order dated 21.04.2014 (P-1) passed by respondent No.5 is wrong, arbitrary and against the law laid down by the Hon'ble Apex Court in case captioned as *“State of Punjab and ors. etc. vs. Rafiq Masih, 2015 AIR (SC) 696;*

*2015 (1) S.C.T. 195* as well as *Instructions No.4/118/09-1FPPC/575043/1*

***dated August 28, 2015*** issued by the Government of Punjab, in pursuance of the observations made in case ***Rafiq Masih's (supra)***.

3. The amount sought to be recovered through the impugned letter/order dated April 21, 2014 (P-1) is on account of wrong payment of annual increments during the period of suspension, for which the petitioner cannot be fastened with the liability especially in the circumstances that there is no fraud or misrepresentation played by the petitioner at the time of advancement of the alleged excess payment. It is well settled proposition of law that no such amount can be recovered from a retiree, alleged to have been paid excess on the basis of some wrong interpretation or ground. The law laid down by the Hon'ble Apex Court in ***Rafiq Masih's case (supra)*** comes to the rescue of the petitioner. The case of the petitioner squarely falls within the parameters laid down by the Hon'ble Apex Court in the above referred case. According to which, no recovery can be effected from the retired employee, which has been paid in excess there being no fraud or misrepresentation on his/her part. Accordingly, recovery of the amount sought to be effected on the basis of the aforesaid letter/order dated April 21, 2014 (P-1) is illegal, arbitrary and against the settled proposition of law.

3. In the light of what has been discussed above, instant petition is allowed. Consequently, impugned order dated April 21, 2014 (P-1) is set aside and the respondents are restrained from effecting the recovery in pursuance thereon. If anything has been recovered in pursuance of the aforesaid impugned order, the same is ordered to be repaid to the petitioner within a period of two months from the date of receipt of a certified copy of this order. In case of non-compliance of aforesaid direction, the petitioner

shall be entitled to interest @ 9% p.a. after the expiry of three months period from the date of his retirement till its actual payment.

OCTOBER 31, 2017

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(JASPAL SINGH)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |