

CWP No. 26813 of 2015 (O&M)
DECIDED ON: SEPTEMBER 22, 2017

.....PETITIONER

VERSUS

.....RESPONDENTS

Present: Mr. Ashish Pannu, Advocate
for the petitioner.

Mr. C.S. Bakshi, Addl. AG, Haryana.

Mr. Samuel Gill, Advocate
for respondents No.2 and 3.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Article 226 of the Constitution of India, petitioner has sought a writ in the nature of certiorari to quash the action of the respondents vide which recovery of ₹1,93,190/- is being made from the family pension.

2. The contention of learned counsel for the petitioner is that petitioner was sanctioned family pension after the death of her husband in the year 2010,

who had superannuated as Assistant Foreman from the respondent-department on April 30, 2005. In the month of March 2015, the petitioner was given lesser family pension than the earlier months. Thereafter, she served a legal notice upon the respondents to know the reason for such reduction. In reply to the notice, it has been stated that due to some error excess family pension amounting to ₹1,93,190/- has been paid to the petitioner and as such there is reduction in the amount of family pension and the said excess payment is also being recovered from her family pension on every month. To buttress his contention learned counsel for the petitioner has relied upon the judgment Hon'ble Apex Court rendered in the case of *State of Punjab and others vs. Rafiq Masih (White Washer) and others; 2015 (1) RSJ 177*, wherein, it has been observed that no amount can be recovered from a Class-III or IV employee, if such amount has been paid without any misrepresentation or fault of the employee.

3. However, no law contrary to the *Rafiq Masih's* case (supra) could be produced by learned counsel for respondents. The respondents are not within their jurisdiction to recover the amount so paid to the petitioner in view of the dictum laid down by Hon'ble Apex Court in *Rafiq Masih's* case (supra). As per the observations made in the afore-said judgment, no recovery can be affected, especially in the circumstances that there was no fraud or misrepresentation etc. on the part of petitioner.

4. In view of afore-said discussion, instant petition is allowed. However, respondents are directed to refund the amount so deducted from the petitioner within three months from the date of certified copy of this order. In

case of non-compliance, it would carry interest @ 9% from the date of passing of this order.

SEPTEMBER 22, 2017
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>