

CWP No.3630 of 2015

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

**CWP No.3630 of 2015
DECIDED ON: OCTOBER 03, 2017**

SURINDER KUMAR

.....PETITIONER.

VERSUS

STATE OF HARYANA AND ORS.

.....RESPONDENTS.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Roshan Lal Sharma, Advocate,
for the petitioner.

Mr. C.S. Bakshi, Additional Advocate General, Haryana.

JASPAL SINGH, J.

Through instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of writ of certiorari, quashing order dated 09.02.2015 (P-6) passed by respondent No.2 whereby recovery of Rs.4,23,892/- on account of alleged excess payment made to the petitioner during his service has been ordered to be recovered from the death-cum retirement gratuity.

2. During the course of arguments, learned counsel for the petitioner could not point out any illegality and infirmity in order dated 09.02.2015 (P-6) passed by respondent No.2 whereby pay fixation has been made. However, this Court find full force in the contention put forth by learned counsel for the petitioner so far as effecting the recovery of Rs.4,23,892/- is concerned.

3. By now, it is well settled that the State cannot recover from a retired employee any amount on account of excess payment due to wrong fixation of pay in view of law laid by Hon'ble Apex Court in *State of Punjab and ors. etc. vs. Rafiq Masih (white washer) & ors., 2015 AIR (SC) 696; 2015 (1) S.C.T. 195*. Despite the fact that law has already been laid down in Rafiq Masih's case (supra), the recovery is being ordered by the officers of State of Haryana out of retiral dues for the excess payment made during service due to inadvertant fixation of pay. This action of the respondents is depreciable. The respondents are not within their right to recover the amount particularly when there is nothing on the record to suggest that the petitioner had committed any misrepresentation or fraud at the time of pay fixation. Nothing has also cited by the respondents in this regard. Thus, though the action of the respondents in re-fixation of pay scale is upheld but the recovery part of the order dated 09.02.2015 (P-6) is quashed/set aside.

4. Accordingly, instant petition is partly allowed but with no order as to costs. Respondents are restrained from effecting the recovery, if, it has not so far been effected and in case, amount has already been recovered/deducted from retiral dues, to refund the same within a period of two months from the date of receipt of certified copy of this order. Yet on account of non-compliance, the petitioner shall be at liberty to approach this Court. However, the petitioner shall not be entitled to any interest.

OCTOBER 03, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes/No*