

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

CWP No. 3732 of 2016 (O&M)
Date of decision: 3.4.2017

Baldev Singh and others

...Petitioners

Versus

Punjab Water Resources Management & Development Corporation Limited.

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ankit Aggarwal, Advocate, for
Mr. Anupam Singla, Advocate,
for the petitioners.

Mr. Amit Singh Sethi, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The petitioners herein are aggrieved against the notices of recovery dated 1.2.2014 (Annexures P/1 to P/5) issued against excess payment made to the petitioner on account of 24 years proficiency step up.

2. In brief, the facts are that the petitioners No. 1 to 3 and 5 were working as Sub Divisional Engineer and retired as such from the department of Punjab Water Resources Management and Development Corporation Limited. Petitioner No. 4 is still in service and working on the post of Assistant Engineer. That during the service of the petitioners, the respondents had granted 24 years proficiency step up to the petitioners between 1999-2004. However, by the impugned notices, it was

communicated to the petitioners that they have been paid excess amount on account of benefits of 24 years proficiency step up extended to them and the same would be recovered from their retiral benefits. Against the said recovery, the petitioners herein made a representation dated 15.2.2016. However, the same was not decided. Aggrieved, the petitioners have approached this Court with their limited prayer that the recoveries, as sought to be made, could not be effected on account of the fact that there was no fraud or misrepresentation made by them at the time of claiming proficiency step up. In fact, the same had been given to them by the respondents of its own.

3. Learned counsel for the petitioner contends that the action of the respondent in issuing notices for recovery of alleged excess payments from their retiral benefits despite the law laid down by the Hon'ble Supreme Court in the case of *State of Punjab and others vs. Rafiq Masih and others, 2015 (4) SCC 334* is neither justified and nor sustainable in the eyes of law.

4. Per contra, learned counsel for the respondent submits that on account of wrong benefits of proficiency step up given to the petitioners, they had been paid the amount in excess, which needs to be recovered.

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

6. A perusal of the impugned notices show that the proficiency step up had been given to the petitioners as far back as between the year 1999 to 2004 and that petitioners No. 1 to 3 and 5 have retired. It is after more than 5 years from the date of release of benefits that the petitioners

herein were asked to deposit the alleged excess payment made to them on account of proficiency step up. The law, in this regard, is well settled by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra). The question before the Apex Court was, whether recoveries could be effected from an employee on account of monetary benefits given, which he was not entitled to. In the case of **Rafiq Masih** (supra), the Apex Court held as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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.

(v) In any other case, where the Court arrives at the

conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7. In the instant case, admittedly, the petitioners were given the benefit of 24 years proficiency step up for the years 2009 onwards. The petitioners herein had made no misrepresentation nor had played any fraud upon the Department in getting those benefits. As has been held in the case of **Rafiq Masih** (supra), no recoveries can be made from the employees belonging to Class-III and Class-IV service or Group 'C' and Group 'D' service after retirement nor can recoveries be made from retired employees or employees who are due to retire within one year of the order of recovery.

8. Learned counsel for the respondent is unable to defend the notices so issued. A feeble attempt has been made to distinguish the judgment as referred in Rafiq's case (supra), but of no avail.

9. Therefore, this Court has no hesitation in holding that such recoveries would not be permissible. In view of above, the impugned notices dated 1.2.2014 (Annexures P/1 to P/5) are hereby set aside and the recovery, if any, already made is held illegal and arbitrary and, therefore, not sustainable.

10. Accordingly, the respondent is directed that the amount, if already recovered, be refunded to the petitioner with interest @ 6% per annum from the date of recovery, within a period of three months from the date of receipt of certified copy of this order. In case, the needful is not done

within a period of three months, then the respondents shall be liable to pay the amount so recovered with interest @ 9% per annum from the date of recovery.

11. The instant writ petition stands allowed accordingly.

3.4.2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No