

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

**CWP No. 7402 OF 2015
DECIDED ON: DECEMBER 19, 2017**

PERMIL SAINI

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ramesh Malik, Advocate for
Mr. Rajbir Sherawat, Advocate,
for the petitioner.

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

JASPAL SINGH, J (ORAL)

Through instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of certiorari/mandamus seeking quashing of letter dated 09.09.2014 (Annexure P-1) to the extent it directs stoppage of payment of monthly financial assistance to the petitioner as well as quashing of letter dated 19.01.2015 (Annexure P-3) whereby the recovery of amount paid on account of monthly financial assistance has been ordered to be effected. With further prayer to continue to make the payment of financial assistance.

2. Concededly, the petitioner was granted the concession of family pension as well as monthly financial assistance under the provisions of Haryana Compassionate Assistance to the Dependents of Deceased Government

employees Rules, 2006, which were made applicable w.e.f. 01.08.2006. However, subsequently, clarification was made by Govt. of Haryana vide its letter dated 16.01.2009 (Annexure R-13) to the effect that where PPP/GPO have been issued in case of death occurred prior to 01.08.2006, under the aforesaid Rules of 2006, financial assistance benefit is not available. However, for one reason or the other, family pension as well as financial assistance under the aforesaid rules were enjoyed by the petitioner. The lapse, omission or negligence on the part of officer came to light in the month of September 2014 when the letter under challenge (Annexure P-1) was passed whereby the payment of monthly financial assistance to the petitioner was stopped and the recovery of the amount so paid on that account was ordered to be effected. The issuance of aforesaid letters necessitated the filing of instant petition by the petitioner.

3. As far as the legality or validity of order dated 09.09.2014 (Annexure P-1) is concerned, the same are legal, valid and perfect in the light of clarification dated 16.01.2009 (Annexure R-13) and the petitioner is not legally entitled to the monthly financial assistance. However, as far as the recovery of the amount vide letter dated 19.01.2015 (Annexure P-3) is concerned, no such recovery can be effected in view of the guidelines and parameters laid down in case captioned as ***“State of Punjab and others v. Rafiq Masih etc.”, 2015 (4) SCC 334***, particularly, in view of the fact that misrepresentation or fraud can be attributed to the petitioner, if the fault lies, the same is with the department.

4. At this juncture, learned State counsel has pointed out that when the lapse or omission on the part of department came into light, a letter dated

16.04.2007 (Annexure R-14) was written to District Treasury Officer, Jagadhari as well as District Treasury Officer, Yamuna Nagar asking to stop one of the benefits being availed off by the petitioner i.e. either the family pension or the monthly assistance but the said letter was never implemented in letter and spirit by the concerned officers. Not only this, subsequently also, the matter was brought to the notice of Treasury Officer Jagadhari vide letter dated 20.04.2007 (Annexure R-15) as well as some other letters. If there is any non-compliance on the part of the office of Treasury Department, the respondent-cooperative department shall be at liberty to take appropriate action.

5. Accordingly, the petition is partly allowed to the extent that the respondents are restrained from effecting the recovery in the light of **Rafiq Masih's** case (supra) and letter dated 19.01.2015 (Annexure P-3), is set aside.

DECEMBER 19, 2017
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(JASPAL SINGH)
JUDGE

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