

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

CM No.4521-C of 2017 in/and
RSA No.2255 of 2016 (O&M)
Date of decision: 8.5.2017

The Rohtak Cooperative Milk Producers Union Ltd., Rohtak
...Appellant

Versus

Jagbir Singh
...Respondent

CORAM:-HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr.Anil Chawla, Advocate for the appellant

None for the respondent

RAJIV NARAIN RAINA, J

1. As per the report of the Registry placed on the file, notice issued to the respondent has been received back with the report that service has not been effected as person has retired from service and his residential address is not known. There is no need to hear the respondent as I propose to dismiss the application for stay of the decree together with the main appeal by upholding the judgment and decree dated 30th November, 2015 passed by the learned first appellate court against the appellant/defendant withdrawing one increment wrongly and inadvertently given to him w.e.f. 1st June, 2004 since he crossed the efficiency bar w.e.f. 1st June, 2005. Accordingly, the plaintiff was not eligible for grant of 2nd increment w.e.f. 1st June, 2004. The mistake has been rectified by the appellant and recovery effected by monthly installments from the pay of the plaintiff. The suit was dismissed by the Civil Judge (Jr.Division), Rohtak by judgment and decree dated 30th

November, 2013 and so also, the judgment and decree of the learned Additional District Judge, Rohtak dated 30th November, 2015 allowing the appeal not on the merits of the case but by application of the principles to be applied in cases where payments mistakenly made by the employer in excess of entitlement are to be recovered from employees when the excess payment has been made for a period of five years before the order of recovery is issued, then it would be impermissible in case of employees belonging to Class III and IV services to make recovery, applying a principle laid down by the Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer), (2014) 8 SCC 883. The learned Addl. District Judge should actually have upheld the orders dated 3rd June, 2011 and 30th June, 2011 for recovery of Rs.27035/- and then applied the law in *Rafiq Masih* to block recovery. In this manner, the right to recovery may exist, but the remedy of recovery is taken away. This should have been the conclusion of the appellate authority. To this extent the judgment is modified which will; make no difference to the conclusion.

2. Accordingly, the appeal is dismissed inasmuch as the decree for recovery is made non-executable. The main case stands disposed of together with the application for stay.

(RAJIV NARAIN RAINA)
JUDGE

8 .5.2017
MFK

Whether Speaking/reasoned

Yes

Whether Reportable

No