

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

RSA No. 2380 of 2015 (O&M)
Date of decision : December 15, 2017

State of Punjab and others

..... Appellants

v.

Gurnam Singh (dead) through L.Rs

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. HS Sitta, Advocate
for the appellants.

Mr. Akshay Kumar Goyal, Advocate
for the respondent/s.

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing the suit filed by the respondent, since deceased, now through his L.Rs.

Brief facts are that the respondent had served in the Army from 28.5.1971 to 27.5.1976. Thereafter, he joined government service on 12.4.1979 as Junior Engineer and retired as Assistant Engineer on 30.9.2007. After his retirement, the appellant realized that it had wrongly granted the benefit of second emergency to the respondent, withdrew the benefit and initiated recovery against him. The respondent challenged the order whereby benefits granted to him were withdrawn as also the recovery.

Both the Courts below having decreed the suit, the State of Punjab is before

this Court.

At the very outset, counsel for the respondent has fairly stated that all that the respondent is entitled to is counting of his military service for the purpose of pension and that no recovery should be made from him in view of the judgment of the Supreme Court in State of Punjab and others vs Rafiq Masih (White Washer) etc. 2015 AIR (SC) 696 since he is a retired employee.

Learned AAG Haryana has argued that the increments which were granted to the respondent on account of his service in the second emergency were rightly withdrawn from him but has accepted that the military service would in any case be counted for pension and that in terms of judgment in Rafiq Masih's case (supra), no recovery could have been made, and the Courts below have rightly set aside the recovery made against the respondent.

I accept the argument of learned AAG Punjab regarding the increments and hold that the increments have rightly been withdrawn with the clarification that the military service has to be counted towards pension and no recovery is to be made. This appeal is disposed of in the above terms.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

December 15, 2017
'kk'

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No