

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 11132 of 2004

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the respondents in issuing the letter dated 14.05.2004 intimating the petitioner to effect recovery from his pension in installments with effect from April, 2004, as illegal and arbitrary. A consequential direction is also sought to the respondents to release the pension of the petitioner with effect from April, 2004.

Heard and perused the record.

When the matter is taken up for hearing, it is noticed that this Court, while admitting the writ petition, granted interim stay of recovery of the amount, vide orders dated 23.07.2004 in WPMP No.14142 of 2004.

The Hon'ble Supreme Court has held in *State of Punjab and others Vs. Rafiq Masih*¹ that recoveries by the employers would be impermissible in law. The operative portion of the judgment delivered in the said case reads as follows:

“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:

¹ (2015) 4 SCC 334

(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.

13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

Following the aforesaid judgment, the writ petition is allowed and the impugned letter dated 14.05.2004 is set aside. The respondents are directed to refund the amount which was already recovered from the petitioner.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

6th September, 2018
cbs

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Writ Petition No.11132 of 2004
(allowed)

6th September, 2018

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