

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

CWP No. 14506 of 2005

Date of Decision: 10.09.2018

Kali Ram and others

...Petitioners

Vs.

Haryana Urban Development Authority (HUDA) and another

...Respondents

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

Present: Mr. Sanjeev Sharma, Advocate for the petitioners.
None for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. HUDA is not represented nor a pass over is sought by anyone when case is called on for hearing. Since the matter is covered by the judgment of Supreme Court, this Court finds no dire necessity to await the appearance of the counsel for HUDA only to delay the proceeding. Even otherwise this matter is also covered by the decision of the Full Bench in Budh Ram Vs. State of Haryana and others, 2009 (3) SCT 333.

2. The petitioners were low paid employees of HUDA and rose to the rank of Clerks. On completion of 10 years of service in February 1985, they were given the benefit of 1st ACP pay scale. By the impugned order dated 15.03.2005, the respondents withdrew the benefit of 1st and 2nd ACP pay scales i.e. Rs. 4000-6000/- and Rs. 5000-7050/- respectively from the petitioners who had joined as Class IV employees on the posts of Peon, Survey Khalasi etc. and were promoted as Clerks after many years of service.

3. They plead that the benefit was given to them by the respondents of their own without the petitioners practicing deceit, misrepresentation or fraud. Feeling aggrieved by recoveries proposed to be effected from their salaries they have approached this Court by way of this present petition for quashing the recovery orders. The Division Bench of this Court by order dated 12.09.2015 issued notice of motion and stayed the recovery ad interim. The petitioners retired from service many years ago.

4. As far as recovery is concerned, there can be no doubt that the matter is covered by the decision of the Supreme Court in State of Punjab and others Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334. The petitioners were and are entitled to the protection afforded by directions No. 1 & 2 issued in the judgment covering situations where recovery from the employees would be impermissible in law and where payments have mistakenly been made in excess of entitlement. By the 1st direction, the Supreme Court prohibited recovery from the employees belonging to Class III & IV.

5. As per another direction, recovery from the retired employees or employees who are due to retire within one year is impermissible. The 3rd direction also applies to their case which bars recovery from the employees when the excess payment has been made for a period in excess of 05 years before the order of recovery is issued.

These three principles culled out by the Supreme Court fully apply to

their cases and accordingly this petition is accepted and the impugned order of recovery (Annex. P-7) is quashed as legally unsustainable.

10.09.2018

(RAJIV NARAIN RAINA)
JUDGE

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