

RA-CW No.219 of 2002 (O&M)

205

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

**RA-CW No.219 of 2002 (O&M) in
CWP No.7237 of 2001
Date of decision : 04.10.2018**

Ishwar Dutt and others

...Petitioners

Versus

State of Haryana and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate
for the applicants/petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Manoj Dhankhar, AAG, Haryana.

RAJESH BINDAL, J.

Review of the order dated 26.07.2002 has been sought by the applicants/writ petitioners.

Vide aforesaid order, the writ petition was dismissed.

In the main writ petition, the challenge was to the order dated 02.05.2001, vide which, amount which was allegedly paid in excess to the petitioners, was sought to be recovered. It was on account of higher scale granted on basis of the higher qualifications.

Learned counsel for the applicants/writ petitioners did not dispute the fact that finally Hon'ble the Supreme Court in the case of "*State of Haryana V/s Kamal Singh Saharwat*" 1999 (7) JT 409, opined that the teachers are not entitled to any higher scale on the basis of higher qualifications. However, he submitted that all the applicants have already retired from service and only prayer which he wishes to press at this stage, is that no recovery be effected from them of the amount already paid. Re-fixation has already been made to which the applicants have no grievance.

RA-CW No.219 of 2002 (O&M)

In support of the plea, reliance has been placed upon the judgment of Hon'ble the Supreme Court in "*State of Punjab and others V/s Rafiq Masih (White Washer) etc.*" 2015 (1) RSJ 177.

Learned counsel for the State does not dispute the fact that the applicants have retired from service and the amount was paid to them while they were in service.

After hearing learned counsel for the parties and considering the fact that the only relief claimed in the present review application now is that the amount in excess already paid to the applicants/writ petitioners before they retired be not recovered, deserves to be accepted as all the applicants retired from service more than 5-6 years back.

It is not in dispute that re-fixation in terms of the entitlement of the applicants had been made when the writ petition was filed, which is not under challenge.

For the reasons aforementioned, the review application is allowed only to the extent that the recovery of the amount already paid to the applicants on account of higher scale on the basis of higher qualifications possessed by the applicants, shall not be effected.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

04.10.2018
Yogesh Sharma

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Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**