

**228 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.11980 of 2015.
Date of Decision: 28.09.2018**

Major Singh died (through L.Rs)

.....Petitioners

Versus

State of Punjab & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Kulwinder Singh, Advocate for
Mr. S.S. Sidhu, Advocate,
for the petitioners.

Ms. Ambika Bedi, AAG, Punjab.

JITENDRA CHAUHAN J.

By filing this civil writ petition under Articles 226 and 227 of the Constitution of India, the petitioners seek setting aside of order dated 26.05.2015 (Annexure P-3) passed by Divisional Soil Conservation Officer, Bathinda, vide which recovery of Rs.88,138/- is sought to be effected from the original petitioner by refixing his pay with effect from 01.01.1986.

It has been contended by the learned counsel appearing on behalf of the petitioners that the original petitioner was appointed as Clerk on 07.02.1977 in the Agriculture department, Punjab. The services of the petitioner were regularized on 01.10.1980. The petitioner earned all the promotions and ultimately he was promoted to the post of Senior Assistant. In the month of March 2015, the

petitioner received a show cause notice dated 02.03.2015 (Annexure P-1) from respondent No.4 for effecting recovery of Rs.88,138/- on account of mis-calculation while granting proficiency step up under the ACP scheme.

It is contended by the learned counsel appearing on behalf of the petitioners that the original petitioner was to retire from his service on 30.06.2016, therefore, in view of the judgement passed in *State of Punjab versus Rafiq Masih and others (2014) 8 SCC 883*, no recovery can be effected from him.

On the other hand, the learned State Counsel has fairly admitted that the original petitioner was a Group 'B' employee and he was slated to retire on 30.06.2016. However, he expired during the pendency of the present petition on 12.12.2015. His legal representatives were brought on record for the purpose of pursuing the present litigation vide order dated 09.03.2016.

Heard.

In *Rafiq Masih's case (supra)* it was held as under:-

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 made, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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.

Admittedly, the petitioner was slated to retire from his service on 30.06.2016. However, prior thereto, he breathed his last on 17.12.2015. No misrepresentation, concealment or fraud was attributed to the original petitioner. The Court feels that the recovery sought to be made would be iniquitous, harsh and arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover. In view of the law laid down in **Rafiq Masih's case(supra)**, no recovery can be effected from him or his LRs. Consequently, the impugned order dated 26.05.2015 (Annexure P-3) is hereby set aside and the present civil writ petition is allowed.

(JITENDRA CHAUHAN)
JUDGE

28.09.2018

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No