IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

268 **CWP-11845-2017**
Date of Decision: 14.11.2018

Kamaljit Kaur ....Petitioner.

Versus

State of Punjab and others ....Respondents.

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CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. S.K. Rattan, Advocate for the petitioner.

Ms. Balbir Singh Sewak, Additional Advocate General, Punjab.

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Shekher Dhawan, J.

Petitioner-Kamaljit Jaur, who is widow of Onkar Singh, who had retired as Panchayat Secretary in 2010, was getting pension since 2011. However, in November/ December 2016, she came to know that the total recovery of Rs.1,35,928/- was ordered to be effected in 20 monthly installments of Rs.7,000/- per month and the said information was received vide letter dated 09.05.2017 (Annexure P2) under R.T.I. Act.

Learned counsel for the petitioner contended that since recovery has been ordered to be effected from the pension after retirement, but as per view taken by Hon'ble Apex Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177***, no such recovery could be effected.

Learned counsel representing the respondents-State contended that the recovery has been ordered to be effected on the basis of audit report and the amount was inadvertently withdrawn by husband of the petitioner in excess, which the authority has right to recover the same, and as such, the present writ petition deserves to be dismissed.

In ***Rafiq Masih's*** *case (supra)*, while dealing with the issue of recovery, Hon'ble Apex Court summarized the following few situations, wherein recoveries by the employers, would be impermissible in law:-

> *"(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 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 for outweight the equitable balance of the employer's right to recover."*

More so, Hon'ble Apex Court in ***Bhakra Beas Management Board Vs. Krishan Kumar Vij & Anr. 2010 AIR (SC) 3342***, observed as under:-

> *"40. It is not in dispute that all the respondents of various appeals have since demitted the office on attaining the age of superannuation. While they were in service, may be on account of orders of the High Court, to save itself from being hauled up for committing contempt of court, Board has made payments to them towards arrears etc. After such a long lapse of time, more*

so, when the respondents have already retired, it will be harsh on our part to direct recovery thereof. Thus, we direct that the amounts already paid to the respondents would not be recovered by the Board."

Having considered the entire facts of the case, this Court is of the considered view that there is no dispute of facts that husband of the petitioner retired in 2010, recovery was ordered to be effected after six years i.e. in November/ December 2016. The plea of the respondents is not tenable that the recovery is being effected on the basis of some audit objections. As such, the present writ petition is accepted and respondents-State are directed to refund the amount which has already been deducted from the pension and be paid to the petitioner and not to effect any recovery on the basis of such an Audit Report. The refund of the amount to be paid to the petitioner within a period of three months from today.

The present writ petition stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

14.11.2018
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No