

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

Sr. No.223

**Civil Writ Petition No.19798 of 2016
DECIDED ON: March 16, 2018**

RAJ DEV RAM

..PETITIONER

VERSUS

**PUNJAB STATE POWER CORPORATION LIMITED AND
OTHERS**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. S.P. Thukral, Advocate,
for the petitioner.

Ms. Pratula Sethi, Advocate,
for the respondents.

JASPAL SINGH, J. (ORAL)

Through the instant civil writ petition, preferred under Articles 226/227 of the Constitution of India, petitioner has sought the issuance of a writ particularly in the nature of Mandamus directing the respondents to release the payment of Rs.3,02,736/- which already stands recovered from the petitioner from his retiral benefits and further direction to respondents to release the annual increments withheld/recovered from the retiral benefits of the petitioner and further to waive of the condition for passing the type

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test/computer test as petitioner is/was being covered under the instructions of the respondents as the petitioner stands completed 50 years of age at the time of working as Meter Reader against the post of LDC/posted as LDC in the year 2007.

2. Concededly, the aforesaid recovery to the tune of Rs.3,02,736/- has been reflected by the petitioner on account of grant of increments, which has subsequently been withdrawn by the respondents. It is well settled proposition of law that there is no fraud or mis-representation on the part of the petitioner, payment, if any, made on account of excess or on some wrong assumption of the rules and instructions, the same is not recoverable from the concerned pensioner/retiree. In the case in hand, admittedly, petitioner stood retired on 31.07.2014, whereas the recovery has been effected from the amount of Gratuity and leave encashment to the tune of Rs.3,02,736/-, which is not permissible under law. Rather, it can be said that action of the respondents in getting the recovery from the gratuity and leave encashment of the petitioner, is in contravention of the law laid down by the Hon'ble Apex Court in case ***State of Punjab and ors. etc. vs. Rafiq Masih (white washer) & ors., 2015 AIR (SC) 696; 2015 (1) S.C.T. 195*** as well as ***Instructions No.4/118/09-1FPPC/575043/1 dated August 28, 2015*** issued by the Government of Punjab, in pursuance of the observations made in the case ***Rafiq Masih's (supra)***. Since, the recovery of the amount in question was not permissible. The respondents are liable to refund the same.

3. Accordingly, instant petition is disposed of with the direction to the respondents to refund the amount to the tune of Rs.3,02,736/- along with interest @ 9% per annum from the date, which was deducted from the

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amount of gratuity and leave encashment of the petitioner till it is actually refunded/repaid. The needful is expected to be done within a period of two months from the date of receipt of a certified copy of this order.

March 16, 2018

Ankur

Whether speaking/reasoned

Whether reportable

Yes

Yes/No

**(JASPAL SINGH)
JUDGE**