

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

245

**CWP No.19936 of 2016.
Date of Decision: 14.11.2018.**

Braham Dass

....Petitioner.

Versus

The Punjab State Power Corporation Ltd. and others Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Pankaj Sharma, Advocate, for the petitioner.

Mr. R.L. Sharma, Advocate for the respondents.

Shekher Dhawan, J.

Present petition under Articles 226/227 of the Constitution of India is for quashing the orders dated 17.05.2015 and 25.07.2016 (Annexure-P2/colly) passed by the respondents, whereby recovery for a sum of Rs.1,81,225/- has been made effective from the death-cum-retirement gratuity of the petitioner.

As per the petitioner, he retired as Lineman on 30.09.2015 after putting in 35 years of service.

Learned counsel for the petitioner contended that the alleged recovery has been ordered to be effected from the gratuity of the petitioner after the date of retirement and the grounds taken in the order are without any basis because the respondents have now effected recovery of that increments which were granted to him on his promotion as ALM on

Learned counsel for the respondents contended that the petitioner was not entitled to increments while he was promoted as ALM, but this fact is not disputed that the recovery has been effected from the payment due towards the petitioner on account of gratuity and i.e. after 20 years and again after his retirement.

In **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177**, 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 outweigh 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.”

Thus, as per view taken by Hon'ble Apex Court in **State of Punjab & Ors. vs. Rafiq Masih's** case (supra), such a recovery cannot be effected after superannuation and after such a long time especially when the petitioner has not misrepresented the facts at any stage and it is not an act of fraud on the part of the petitioner.

Accordingly, the present writ petition is accepted. The orders dated 17.05.2015 and 25.07.2016 are set aside and the respondents are directed to refund the amount of Rs.1,81,225/- alongwith interest at the rate of 9% from today till the date of actual payment, within a period of two months.

(SHEKHER DHAWAN)
JUDGE

14.11.2018
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No