

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

CWP No.7414 of 2012 (O&M)

Date of decision: 05.09.2018

Baldev Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Randhir Singh, Advocate for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

Mr. R.S. Pandher, Advocate for respondent No.3.

Jitendra Chauhan, J. (Oral)

Through the present petition, the petitioner seeks quashing of impugned letter dated 07.02.2012 (Annexure P-9) issued by respondent No.3 whereby the petitioner was called upon to deposit the salary paid to him for the period for which he was granted antedated promotion w.e.f. 16.12.2005 to 05.03.2008 and consequently effected recovery from the pay and withheld 60% of pay for the month of March, 2012.

The petitioner was granted the benefit of promotion to the post Senior Assistant, vide order dated 05.03.2008 (Annexure P-3) and subsequently, by virtue of order dated 24.07.2008 (Annexure P-5), his promotion was ordered to be made w.e.f. 16.12.2005 instead of 05.03.2008 with a rider that the said order will stand cancelled, if subsequently any audit objection is raised and the financial benefit given

will be recovered from him. He further submits that it is the department who had granted the benefit of promotion etc., The petitioner never misrepresented before the department, therefore, it is asserted that the impugned order of recovery dated 07.02.2012 (Annexure P-9) is arbitrary and illegal.

Learned State counsel as well as learned counsel for respondent No.3 though acknowledge the factum that the petitioner never misrepresented and the amount in question was paid in pursuance of order dated 24.07.2008 (Annexure P-5), however, it is contended that the petitioner had given an undertaking to the effect that he will return the amount along with interest if any objection was raised by the auditor. The benefit was given to the petitioner on the basis of order passed by the Principal of the institute and there was no decision of the Board of Governors to give retrospective promotion/arrears to the petitioner.

Heard.

Vide order dated 05.03.2008 (Annexure P-3), the petitioner was promoted to the post of Senior Assistant in the pay scale of Rs.5800-200-9200 with initial start of Rs.5800/-. In continuation of the order dated 05.03.2008 (Annexure P-3), another order dated 24.07.2008 (Annexure P-5) was passed whereby the promotion of the petitioner was made w.e.f. 16.12.2005 instead of 05.03.2008. However, in the 10th meeting of Finance Committee held on 14.12.2011, the impugned order dated 07.02.2012 (Annexure P-9) came to be passed. It is to be noticed that the orders dated 05.03.2008 (Annexure P-3) and 24.07.2008 (Annexure P-5) have been shown to be passed by the Principal whereas

the impugned order dated 07.02.2012 (Annexure P-9) has been shown to be passed by the Director, whereas, the Director and Principal is one and the same post. Considering the fact that the petitioner did not misrepresent before the institute, therefore, no recovery could be effected from the petitioner, in view of the ratio of law laid down by Hon'ble the Supreme Court in *State of Punjab Vs. Rafiq Masih*, 2015(1) SCT 195.

Disposed of.

However, the authorities are free to recover the amount from the Principal/Director after affording him/her opportunity of hearing, if so advised.

05.09.2018

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No