

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

**CWP No. 2549 of 2014.  
Date of Decision: 13.12.2018**

Satpal

.....Petitioners

Versus

State of Punjab & others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present:- Mr. R.K. Arya, Advocate,  
for the petitioner.

Mr. Vikas Mohan Gupta, Addl. AG Punjab.

**JITENDRA CHAUHAN J.**

By filing this civil writ petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks setting aside of order dated 25.11.2013 (Annexure P-2) passed by respondent No.2, vide which recovery of excess amount towards salary has been sought to be effected from the petitioner by refixing his pay.

It has been contended by the learned counsel for the petitioner that the petitioner was appointed as Clerk on 20.01.1977 in the office of Deputy Commissioner, Gurdaspur. On 01.11.1991 the petitioner was promoted to the post of Junior Assistant with the pay scale of Rs.1500-2640. On 01.11.1999 he was granted the benefit of ACP. Thereafter, he was granted two special increments under the new ACP Scheme on completion of nine years and fourteen years of

service. However, the order dated 22.11.2013 (Annexure P-1) was passed vide which the benefit of two increments granted to the petitioner was ordered to be withdrawn on the ground that the petitioner was not entitled to ACP in view of his promotion and recovery was sought to be effect from him. It is further contended that the impugned order was passed on 25.11.2013, a few months prior to the date of superannuation on 31.05.2014, 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, it is contended that the petitioner was not entitled to the benefit of ACP as he himself had foregone the promotion, therefore, the department was well within its right in rectifying the mistake by re-fixing the pay of the petitioner.

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 on attaining superannuation on 31.05.2014. No misrepresentation, concealment or fraud was attributed to the 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. Consequently, the impugned order dated 25.11.2013 (Annexure P-2) is hereby set aside and the present civil writ petition is allowed.

**(JITENDRA CHAUHAN)**  
**JUDGE**

13.12.2018.

SN

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