

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

CWP No.25019 of 2015.

Date of Decision: 08.02.2018.

Balwinder Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Harinder Sharma, Advocate,
for the petitioners.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN.J.

Challenge in this civil writ petition is laid to the order dated 08.10.2015 passed by respondent No.4 (Annexure P-3) vide which recovery of 5% Rent Free Accommodation Allowance is being made from the petitioners.

The petitioners were initially appointed in the Wildlife Wing, a separate organization of the Forest Department, Government of Punjab. Vide order dated 19.02.2001, the Government of Punjab issued an order for re-organization of the Wildlife Wing of the Forest Department. Under the scheme of Re-organization, vide order dated 19.02.2001 (Annexure P-1), the Wild-Life staff came under the administrative control of Forest Divisions for all intents and purposes. Thereafter, the petitioners continuously worked/working under the administrative control of their respective Forest Divisions of

the Forest Department. Further as per report Annexure A-1, on merger, the posts of Wildlife Warden, Wildlife Inspectors and Wildlife Guards would be re-designated as Forests Rangers, Deputy Rangers and Forest Guards respectively.

It has been further averred that on raising certain objections by the Audit Department, respondent No.4 passed order Annexure P-3 for effecting recovery from the petitioners.

As per the reply filed by respondent Nos. 1 to 6, 5% HRA is admissible to Forest Guards, Forest Rangers and Foresters only whereas, the petitioners being officials of Wildlife Wing were not entitled to 5% HRA. On objection raised by Audit Wing of Accountant General, (Audit) Punjab, Chandigarh, recovery of 5% is being effected from the petitioners.

Learned counsel for the petitioners relies upon *State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334* to contend that no recovery can be effected from retired employees and Group-C and Group-D employees. Petitioners No. 1, 6 and 7 are retired employees whereas, the remaining petitioners are Group-C employees.

On being asked, learned State counsel could not refute the factual aspect of the matter that some of the petitioners have retired and the remaining are Group-C employees.

Heard.

The HRA was paid to the petitioners as admissible to

the employees of the Forest Department. Once the merger of the erstwhile Wing has taken place under the scheme of Government vide Annexure P-1, the petitioners are entitled to all the relief admissible to the Forest Department. Otherwise also, there is no representation on behalf of the petitioners. The relevant paragraph of the observation of Hon'ble the Supreme Court in **Rafiq Masih's case (supra)** is set out 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 may, as a ready reference, summarize 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.”

In view of the above, the recovery sought to be

effected is impermissible. Consequently, the present writ petition is allowed and the impugned order Annexure P-3 passed by respondent No.4 is set aside.

08.02.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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