

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 26188 of 2014

Date of Decision: May 16, 2018

Bala Dutt

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present:- Mr. Jai Bhagwan, Advocate
for the petitioner

Mr. Hitesh Pandit, Addl. A.G. Haryana

Mr. Vishal Gupta, Advocate and
Ms. Parminder Kaur, Advocate
for respondent No. 2

Sudhir Mittal, J. (Oral)

The petitioner was appointed as Shop Helper w.e.f. 16.06.1980. He was promoted to the post of Salesman w.e.f. 18.10.1984 and thereafter he was promoted to the post of Marketing Assistant w.e.f. 13.10.1995. Vide order dated 13.06.2013, he was further promoted to the post of Assistant Marketing Officer. He retired from the said post on 30.10.2016. Prior to his retirement order dated 04.12.2014 (Annexure P-1) was passed withdrawing promotional increments granted to him on account of certain Government instructions.

I have been informed that the amount to be recovered from the petitioner works out to approximately Rs. 40,000/- and the said amount has been retained by respondent No. 2 from the retiral benefits of the petitioner.

The submission of learned counsel for the petitioner is that the promotional increment was granted by respondent No. 2 and there was no misrepresentation on the part of the petitioner and he was not responsible in any manner for the grant thereof. The mistake was made by respondent No. 2 itself and,

therefore, recovery made by it is illegal. Reliance is placed upon *State of Punjab vs. Rafiq Masih, 2015(1) SCT 195*.

The prayer is opposed by counsel appearing for respondent No. 2 also by placing reliance upon the judgment in *Rafiq Masih (supra)* on the ground that the order impugned in the writ petition was passed more than one year before the date of retirement of the petitioner and, thus, there is nothing illegal about the impugned order.

The judgment of *Rafiq Masih (supra)* lays down that in such cases it is to be seen which of the parties would suffer more if the recovery is effected/not effected. If effect of recovery is more improper, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary to effect the same. The right of the employer would stand eclipsed in such a situation. The specific instances given in para 12 of the judgement, are only illustrative and not exhaustive and, therefore, the Supreme Court has held in sub para (v) of Para 12 that wherever the Court finds that recovery from an employee would be iniquitous such recovery would not be permitted.

The petitioner undisputedly is a retiree and a sum of Rs. 40,000/- is worth much more to him than to the employer and, therefore, it would be iniquitous to recover the said amount from him.

The writ petition is, accordingly, allowed and the impugned order dated 04.12.2014 (Annexure P-1) is quashed. Respondent No. 2 is directed to refund the amount retained by it to the petitioner within a period of four weeks from the date of receipt of certified copy of this order.

May 16, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No