

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

CWP-313-2014 (O&M)
Date of decision : 04.05.2018

Ramesh Chand

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioner is aggrieved against the order dated 27.09.2013 (Annexure P-3), whereby, an amount of ₹1,07,423/- has been ordered to be recovered from the petitioner.

The learned counsel cites *State of Punjab Vs. Rafiq Masih, 2015(1) S.C.T. 195*, and states that the impugned order of recovery deserves to be set aside.

On the other hand, the learned State counsel submits that the recovery has been ordered to be effected on account of the fact that the petitioner had been wrongly granted 8 and 18 years proficiency step-up.

Heard.

It is not in dispute that the benefit of proficiency step-up

was given to the petitioner without there being any misrepresentation or fraud on his part. In Rafiq Masih's case (supra), it has been held as under:-

“12. 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, 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.

The petitioner retired on 30.11.2013, whereas, the impugned recovery was ordered against the petitioner on 27.09.2013. Thus, the case of the petitioner is squarely covered by the ratio of law as laid down in Rafiq Masih's case (supra). The amount paid in excess, if any, is not on account of any lapse or misrepresentation on the part of the petitioner; it is the department which erred in granting him such a

benefit.

Therefore, keeping in view the above, the instant petition is allowed and the impugned order, Annexure P-3, to the extent of effecting recovery to the tune of ₹1,07,423/-, is set aside.

Allowed.

04.05.2018
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(JITENDRA CHAUHAN)
JUDGE

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