IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9281-2015 (O&M)
Date of decision : 14.11.2018

Naresh Kumar

...Petitioner

Versus

The Punjab State Power Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Shikha J. Jaidka, Advocate for the petitioner.

Mr. Parminder Singh-I, Advocate for the respondents.

JITENDRA CHAUHAN, J.

The petitioner is aggrieved against order dated 04.11.2014 (Annexure P-4), passed by respondent No.5, whereby, an amount of ₹65,243/- has been ordered to be recovered from the petitioner; and has further prayed for quashing of order dated 14.09.2012 and 18.09.2012 whereby, the pay of the petitioner has been refixed.

Learned counsel for the petitioner does not press the petition to the extent of impugned re-fixation of pay. The only issue pressed by learned counsel is with regard to impugned recovery of an amount of ₹65,243/-.

It is contended that the amount paid in excess, if any, is not a result of some misrepresentation or fraud on the part of the petitioner. 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 ratio of law laid down in Rafiq Masih's case (supra) is not applicable in this case as the petitioner has given an undertaking to refund any excess payment, being made to him in contravention of the government instructions.

Heard.

It is not in dispute that the benefit in question was accorded 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.

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 impugned order of recovery of ₹65,243/- (Annexure P-4) is, hereby, set aside.

Partly allowed.

14.11.2018 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

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