

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

CWP No. 10437 of 2016.

Date of Decision: 19.09.2019.

Hasan

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. P.S.Khurana, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, DAG Punjab.

JITENDRA CHAUHAN.J.(ORAL)

Challenge in this civil writ petition is laid to the order dated 05.05.2015 (Annexure P-3) vide which recovery of Rs.75,759/- has been sought to be made from the petitioner on account of wrong fixation of pay w.e.f. 01.01.2006.

The petitioner was initially appointed as Peon in the office of Block Panchayat Officer, Kharar on 01.01.1979. Thereafter, he was transferred to Block Panchayat Officer, Majri. Now, the petitioner has superannuated on 31.12.2017. During service, the petitioner was served with a notice dated 05.05.2015 (Annexure P-2) vide which recovery of Rs. 75,759/- was sought to be effected from him.

Learned counsel for the petitioner 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 Class-IV

employees.

On being asked, the learned State counsel could not refute the factual aspect of the matter that the petitioner has retired as a Class-IV employee. However, it is contended that the recovery is being effected in view of the instructions dated 05.10.2012.

Heard.

The relevant paragraph of the observations of Hon'ble the Supreme Court in **Rafiq Masih's case (supra)** is reproduced 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.”

The recovery is sought to be effected in view of the

instructions dated 05.10.2012 which stand superseded by new instructions dated 28.08.2015 (Annexure P-8) in view of the judgment rendered in **Rafiq Masih's case (supra)** which specifically debars recovery from the employees belonging to Class-III and Class-IV posts. Admittedly, the petitioner has retired as a Class-IV employee.

In view of the above, the recovery sought to be effected from the petitioner is impermissible. Consequently, the present writ petition is allowed and the impugned order dated 05.05.2015 (Annexure P-2) is hereby set aside.

19.09.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

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