

RSA-1190-2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1190-2016 (O&M)

Date of Decision: 13th May, 2019

State of Punjab & others

...Appellants

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. T.P.S. Chawla, DAG, Punjab
for the appellants – State.

Mr. A.P.S. Rehan, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 07.10.2011 passed by the Civil Judge (Junior Division), Gurdaspur, whereby, suit for declaration to the effect that the order dated 13.02.2009, vide which, recovery of ₹ 1,10,327/- was ordered to be effected from the retiral benefits of the respondent – plaintiff stands decreed by setting it aside with further direction to release the recovered amount along with compound interest at the rate of 12% per annum from the date of recovery till the date of realization, appeal against which preferred by the State – appellants was dismissed by the Additional District Judge, Gurdaspur, on 01.05.2015.

2. Learned counsel for the appellants could not disturb the findings as has been recorded by the Courts below in the light of the judgment passed by the Hon'ble Supreme Court in **State of Punjab Vs.**

Rafiq Masih & others, 2015 (1) RSJ 177, wherein, it has been held that the

recovery from a retired employee or the employee who is due to retire within one year of the order of recovery and who belongs to Class III and IV service for group 'C' and 'D', cannot be effected and the same is, therefore, illegal. However, he asserts that the compound interest which has been granted on the recovered amount from the date of such recovery till the date of realization i.e. 12% per annum, cannot sustain as it is contrary to the provisions of the Code of Civil Procedure and even the interest, as this was not a contractual obligation which was violated by the State. He, thus, contends that the judgments and decree as passed by the Courts below to this extent cannot sustain and deserves to be set aside.

3. On the other hand, learned counsel for the respondent – plaintiff has asserted that the appellants have recovered the amount from the pensionary benefits of the respondent – plaintiff without any authority of law and contrary to the settled principles. He contends that the State has unduly enriched itself and in this process denied the rightful benefit to the respondent, because of which, benefit of compound interest at the rate of 12% per annum stands granted, which does not call for any interference.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

5. It can be safely said, in the light of the judgment of the Hon'ble Supreme in *Rafiq Masih's* case (supra) that recovery which has been effected from the retiral benefits of the respondent – plaintiff, could not have been so effected, however, keeping in view the fact that in the light of

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the said judgment, recovery could not have been effected from the respondent of the amount, which has been paid to him, which may be in excess.

6. Since the amount which has been wrongfully recovered from the respondent – plaintiff has been retained by the appellants, respondent – plaintiff would be entitled to interest on the said amount, which has been granted by the Courts below. However, the rate of interest granted by the Courts below is 12% compounded per annum, which is not sustainable in the given facts and circumstances of the case, especially in the light of the fact that it is not a commercial transaction.

7. In view of the above, judgments and decree passed by the Courts below are modified to the extent that the respondent – plaintiff shall be entitled to interest at the rate of 12% per annum simple from the date of recovery till the date of realization.

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In the light of the disposal of the main appeal, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

13th May, 2019
Harish

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