

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

CWP No.20147 of 2019

Date of Decision : 03.02.2020.

Dilbag Singh

...Petitioner

Versus

Chaudhary Devi Lal University, Sirsa and anotherRespondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Ajay Kamboj, Advocate for the petitioner.

Mr. Mr. Indresh Goel, Advocate for the respondents.

B.S.WALIA, J. (Oral)

1. Prayer in the writ petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing order Annexure P/5 dated 16.11.2018, vide which senior scale granted to the petitioner w.e.f. 02.12.2005 was ordered to be withdrawn as also to the recovery ordered in view thereof.

2. Learned counsel contends that although the petitioner has challenged order Annexure P/5 dated 16.11.2018 not only qua order withdrawing senior scale granted to the petitioner w.e.f. 02.12.2005 but also to the recovery of payment made in view of withdrawal of senior scale, yet he confines challenge in the writ petition only to the extent of recovery in the light of para No.12 (iii) of the decision of Hon'ble the Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer) etc., arising out of SLP (C) No.11684 of 2012. Paragraph No.12(iii) of the decision in Rafiq Masih's case (supra) is reproduced 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:

xx xx xx

(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.

xx xx xx”

3. The aforementioned extract reveals one of the situations wherein recovery by the employer has been held impermissible in the eyes of law.

4. Learned counsel for the respondents has not been able to controvert the plea of the petitioner that impugned recovery cannot be made for a period in excess of five years prior to the order of recovery Annexure P/5 dated 16.11.2018, in view of decision of Hon’ble the Supreme Court in Rafiq Masih’s case (supra).

5. Accordingly in view of the position as noted above, the writ petition is allowed. Impugned order Annexure P/5 dated 16.11.2018 is quashed to the extent it directs recovery beyond a period of five years prior to the date of order of recovery.

(B.S.WALIA)
JUDGE

03.02.2020

rajesh.k.khurana

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