

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

**CWP No. 8008 of 2020 (O&M)
DATE OF DECISION : 08.02.2021**

Harmesh Chand

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Om Pal Sharma, Advocate,
 For the petitioner.

 Ms. Anju Sharma Kaushik, DAG, Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is under Articles 226/227 of Constitution of India seeking issuance of a writ in the nature of certiorari for quashing impugned recovery memo Annexure P-1, whereby a sum of Rs.1,61,109/- is to be recovered from petitioner, a Class-IV employee due for retirement on 30.06.2020.

2. Having heard rival contentions of both the learned counsels, I am of the view that case of the petitioner is indeed squarely covered by Apex Court judgment in case titled “*State of Punjab and others Vs. Rafiq Masih (White Washer) etc.*”, 2015 (4) SCC 334. Relevant part thereof is extracted hereinbelow:-

“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.

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.”

3. In the case in hand, learned State counsel contends that inadvertently benefit of 9/14 year ACP was granted to the petitioner. After re-examination of his service book, his pay was re-fixed after giving 14 year ACP. She relies on letter written by the petitioner dated 01.06.2020 (Annexure R-1/T) and argues that petitioner himself gave consent for initiating recovery from his salary.

4. Concededly, the aforesaid undertaking was taken from the petitioner, a class IV employee, on the verge of his retirement. Naturally threatened with the consequences of withholding of all his retiral benefits, post his retirement, he would have signed on dotted lines. It is not otherwise the case of respondent-department that petitioner was either instrumental and/or indulgent in any misrepresentation to get the erroneous financial benefit, later sought to be rectified by way of impugned recovery memo.

5. In view of the above, writ petition is allowed. The impugned recovery memo contained at Annexure P-1, issued after almost 14 years, on

the ostensible ground that some benefits on account of ACP were wrongly granted to the petitioner to which he was not entitled, is set aside. Any recovery already made pursuant to the impugned order shall be reimbursed to the petitioner along with interest @ 6% per annum.

- 6. Let the needful be done within a period of 60 days from today.
- 7. Disposed of in above terms.

FEBRUARY 08, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No