

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**

WRIT PETITION No.13027 of 2009

ORDER : (Per AKS, J)

When the matter is taken up for hearing, the Government Pleader appearing for the petitioners had contended that the excess amounts were paid in favour of the respondent while he was working as Head Constable and the said error was noticed by the petitioners after voluntary retirement of the respondent from service on 30.11.2003.

2. When the petitioners have realized the error, they have issued proceedings dated 11.03.2004 recovering an amount of Rs.21,496/- from the respondent's terminal benefits. Aggrieved by the same, the respondent has filed O.A.No.5094 of 2007 before the Tribunal and the Tribunal had allowed the O.A. by setting aside the orders of recovery, vide orders dated 13.06.2008 without appreciating any of the contentions raised by the petitioners, as error has crept-in in extending the payscales, the petitioners were justified in recovering the excess amount paid to the respondent.

Therefore, prayed to allow the writ petition by setting aside the orders passed by the Tribunal in O.A.No.5094 of 2007, dated 13.06.2008.

3. Counsel appearing for the respondent had contended that the Tribunal was justified in allowing the O.A. setting aside the orders of recovery issued by the petitioners. The counsel for respondent has contended that the issue raised in the present case is squarely covered by the judgment of Hon'ble Supreme Court in **State of Punjab & others v. Rafiq Masih (White Washer)**¹ and as per the said judgment, the excess amounts erroneously paid to an employee by the employer, cannot be recovered after retirement. Therefore, there are no merits in the writ petition and it is liable to be dismissed.

4. This Court, having considered the rival submissions made by the parties, is of the considered view that the Tribunal was justified in allowing the O.A. Even in the judgment in **Rafiq Masih's** case, in para 18, the Hon'ble Supreme Court has postulated the

¹ (2015) 4 SCC 334

following situations where recoveries by employer would be impermissible:

“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the 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."*

5. In view of the law laid down by the Hon'ble Supreme Court as stated above, the Tribunal is justified in allowing the O.A. Therefore, this Court is not inclined to interfere with the orders passed by the Tribunal.

6. The writ petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

G. ANUPAMA CHAKRAVARTHY, J

2nd August 2022

ajr/trr