

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

**CWP-11178-1999 (O&M)
Date of decision: 03.08.2022**

B.P. Gupta

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.K. Malik, Sr. Advocate
with Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. R.D. Sharma, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter-alia*, seeks issuance of a writ in the nature of Mandamus for directing the respondents to regularize the promotion of the petitioner as Sub-Divisional Engineer w.e.f. 31.10.1987 alongwith all consequential benefits.

2. Succinct facts first. Petitioner was appointed as Junior Engineer in the respondent department on 19.05.1960. He was confirmed on 26.10.1966 and later promoted as Sub Divisional Engineer on ad-hoc/provisional basis against deputation vacancies subject to approval of HPSC on 14.08.1981. He was granted the scale of Rs.3000-4500 w.e.f. 01.05.1989. However, the benefit of scale of Rs.3000-4500 was withdrawn on 31.12.1996 on the ground that the same was admissible only after rendering 5 years regular service and promotion of the petitioner was on

adhoc basis. Petitioner filed a writ petition bearing CWP No.849 of 1997 against the order of withdrawal of the aforesaid pay-scale and that writ petition was allowed on the ground that no opportunity of hearing was granted to the petitioner before passing the order of withdrawal dated 31.12.1996. Thereafter, the petitioner moved several representations to finalize his case for regular promotion w.e.f. 31.10.1987 but to no avail as the State had referred the matter to the Haryana Public Service Commission and the same was not approved by HPSC.

3. After arguing for some time when the learned Senior counsel for the petitioner realized that I am not inclined to allow the petition qua promotion w.e.f. 31.10.1987, he restricts his claim to impugned recovery of excess payment made to the petitioner in view of the judgment of the Supreme Court judgment titled as ***State of Punjab and others vs. Rafiq Masih (White Washer) etc.***, (2015) 4 SCC 334, the relevant para thereof is reproduced herein below:-

“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.”

4. Perusal of the above clearly reflects that wrong fixation of pay of the petitioner is insignificant as long as there was no misrepresentation on the part of the petitioner. I see no reason why the principles enunciated in Rafiq Masih’s case *ibid* cannot be applied in the present case and benefit thereof be not given to the petitioner.

5. Petition is allowed to the extent that excess amount already paid to the petitioner cannot be recovered from him.

(ARUN MONGA)
JUDGE

August 03, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No