

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

CWP NO. 22330 OF 2013

DATE OF DECISION: 04.04.2022

Dharam Pal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sanjiv Gupta, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

The petitioner has approached this Court for issuance of a writ in the nature of certiorari seeking quashing of impugned show cause notice dated 06.06.2013 (Annexure P-1) and order dated 04.09.2013 (Annexure P-4), passed by respondent No.3 whereby pay of the petitioner has been reduced and recovery has been ordered.

2. Brief facts first. Petitioner was appointed as Conductor on 01.04.1977 and thereafter promoted from time to time upto the post of Inspector. He was superannuated on 30.04.2008. On 06.06.2013, petitioner received Show Cause Notice mentioning that he had been wrongly granted one additional increment on his promotion as Inspector whereas he was not fulfilling the required five years' experience as Sub Inspector and he was already drawing second higher standard scale prior thereto. In pursuance to reply filed by the petitioner, he was called for personal hearing. On 04.09.2013, pay of the petitioner was reduced and his pension was also reduced. Further recovery has been ordered to be

effected from him. Hence, the petition.

3. Learned counsel for the petitioner contends that case of the petitioner is squarely covered by judgment passed in **State of Punjab and others versus Rafiq Masih, AIR 2015 SC 696.**

4. On the other hand, the learned State Counsel has fairly admitted that the petitioner was a Group 'C' employee at the time of retirement and he retired on 30.04.2008.

5. Having heard learned counsels for the parties, the very nature of the show cause notice/recovery order clearly conveys that there was no misrepresentation on behalf of the petitioner. There is candid admission on part of the department that higher pay was given erroneously and not on the basis of any misrepresentation on the part of the petitioner.

6. I am of the opinion that the recovery sought to be made would be iniquitous, harsh and arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover. In view of the law laid down in **Rafiq Masih's case (supra)**, no recovery can be effected from him. Relevant extract from the same is reproduced hereunder:

“ 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 made, 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.”

7. Admittedly, there is no misrepresentation, concealment or fraud on the part of petitioner. In view of **Rafiq Masih’s case** (supra), no recovery can be effected from the petitioner, a Group ‘C’ employee. Accordingly, impugned show cause notice dated 06.06.2013 (Annexure P-1) and order dated 04.09.2013 (Annexure P-4) are hereby quashed. Recovery order as a consequence of impugned order also stands quashed.

8. Allowed in the aforesaid terms.

APRIL 04, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No