

**CWP-25085-2016**

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

**213**

**CWP-25085-2016**

**Date of decision : 22.07.2022**

**RAVI DUTT SHARMA**

..... Petitioner

**VERSUS**

**STATE OF HARYANA & ORS**

..... Respondents

**CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

**\*\*\***

Present :- Mr. Jangjit Singh Dahiya, Advocate  
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

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**HARSIMRAN SINGH SETHI, J. (Oral)**

Learned counsel for the petitioner argues that though in the present petition, the petitioner is also challenging the refixation of his salary but, the petitioner is only pressing his prayer with respect of the recovery of Rs.81159/-, which is being sought to be done from the petitioner upon refixing his salary. Learned counsel further submits that in the year 1996, while giving the promotion to the petitioner from the post of Zileदार to that of Deputy Collector, he was given one increment. The said increment was drawn by the petitioner till his date of retirement on 31.05.2013 but, after the said date, the pay of the petitioner was refixed on the ground that the said increment granted to the petitioner in 1996, was wrongly granted. Learned counsel for the petitioner argues that the claim of the petitioner in respect of the recovery of the excess amount is covered by the judgment of Hon'ble

Supreme Court of India in **Civil Appeal No.11527 of 2014 State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. [2015(2) SCC (Civil) 608]** according to which, if an employee kept on receiving benefit for a period of five years, before the same was withdrawn, no recovery of the excess amount paid can be done.

After notice of motion, the respondents have filed the reply. The respondents submit therein that as the petitioner was already drawing a higher pay scale than that of the post of Zileदार at the time of promotion and that on promotion, the petitioner was not entitled for the grant of an increment which was inadvertently extended to him. Learned counsel submits that as and when the said discrepancy was noticed, the benefit was withdrawn and pay of the petitioner was refixed and it was noticed that the petitioner was paid a sum of Rs.81159/- beyond his entitlement and as the said excess amount paid to the petitioner is a public money, the same was rightly ordered to be recovered.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question is whether in the facts and circumstances of present case, the recovery of excess payment can be done from the petitioner or not. It is a conceded fact that the pay of the petitioner was fixed by the respondents themselves after granting him promotion to the post of Deputy Collector in the year 1996. There was no misrepresentation or fraud made by the petitioner seeking the grant of one increment, which was granted to him, and then withdrawn by the respondents which led to the payment of excess amount, which amount is now sought to be recovered.

As per the settled principle of law settled by Hon'ble Supreme

Court of India in **State of Punjab and others etc. Vs. Rafiq Masih (supra)**, once an employee continue to get benefit for a period of five years before the same was withdrawn, no recovery can be done. A part from this, an employee who has retired or who is to retire within a period of one year, no recovery of the excess amount can be done. The relevant paragraph 12 of the judgment is as under:

“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.”

In the present case, the petitioner continue to get the increment for a period of more than five years at the time when the same was withdrawn and had retired by the time recovery of the excess amount was sought to be effected, hence, the recovery of the excess amount paid to the petitioner is not permissible.

Apart from Rafiq Masih (supra) even the judgment of the Hon'ble Supreme Court of India rendered in **Civil Appeal No.7115 of 2010 titled Thomas Daniel Vs. State of Kerala and others** can be relied in the facts and circumstances of this case. As per the law laid down in Thomas Daniel (supra), if there is no fraud played by the employee concerned or where there was no misrepresentation by the employee so as to get the benefit which is being withdrawn, no recovery of the excess amount can be done after withdrawing of the benefit. As there is no misrepresentation being alleged against the petitioner, the recovery is impermissible. Relevant part of Thomas Daniel (supra) is as under:-

*“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”*

Keeping in view the above, the recovery being done from the

petitioner amounting to Rs.81159/- is held to be bad and is accordingly

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quashed. In case the said amount has been recovered from the petitioner, the same be refunded back to the petitioner within a period of two months from the date of receipt of the certified copy of this order.

The petition stands allowed in above terms.

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

**22.07.2022**

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Whether speaking/reasoned  
Whether Reportable :

Yes  
No