

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

CWP-4519-2022

Date of decision : 01.03.2023

KULWANT SINGH

....Petitioner

Versus

PSPCL AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Pankaj Sharma, Advocate for the petitioner.

Mr. Hittan Nehra, Advocate and
Mr. Gauravdeep Singh, Advocate for
Mr. Karan Mathur, Advocate for the respondent-PSPCL.

PANKAJ JAIN, J. (ORAL)

Petitioner seeks writ in the nature of certiorari for quashing the orders dated 12th of November, 2021 and 17th of December, 2021 (Annexure P-8) whereby amounts of Rs.17,277/- from Leave encashment and Rs.5,14,391/- from Gratuity have been deducted after re-fixing the pay of the petitioner.

2. Petitioner was appointed as Lineman with respondent-Corporation in the year 1985. Thereafter he promoted as Additional Assistant Engineer in the year 2016. He retired from the services on attaining the age of superannuation on 31st of October, 2020 as Asstt. Engineer/SDO. After retirement petitioner was paid only provident fund and provisional pension. Petitioner represented to the authority and finally approached this Court by way of CWP No.15955 of 2021 seeking directions to the respondents to pay the other retiral benefits i.e. gratuity, compute pension, leave encashment, full pension etc. The same was

disposed off vide order dated 19th of August, 2021. As a result thereof, all the retiral benefits were paid to the petitioner on 25th of January, 2022. However, later on vide Annexure P-3, the pay of the petitioner was sought to be re-fixed and recovery of Rs.17,277 and Rs.5,14,391/- was ordered to be made vide Annexure P-8.

3. Counsel for the petitioner submits that whole of the exercise has been done without issuing any notice to the petitioner and the same is in violation of the law laid down by the Apex Court in **State of Punjab & others Vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334**.

4. Counsel for respondents is not in a position to dispute the factual assertions made by counsel for the petitioner with respect to non-service of notice and the same being in the teeth of law laid down in **Rafiq Masih's** case (supra) wherein the Apex Court held as under :-

“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.”

5. Consequently, the present writ petition is allowed. Order Annexure P-4 is set aside. In terms of law laid down in **Rafiq Masih's** case supra it is held that no recovery can be effected from the petitioner post retirement.

6. However, liberty is granted to respondents to re-fix the pay of the petitioner in accordance with law after affording him an effective opportunity of hearing.

7. Ordered accordingly.

March 01, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No