

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

CWP No.13080 of 2020 (O&M)

Date of decision : 02.02.2023

Rekha Rani @ Sham Piari

..... Petitioner

versus

Punjab State Power Corporation Ltd. & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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

Mr. Alok Mittal, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Petitioner who is a retiree is aggrieved of action of the respondents-
Corporation in withholding her terminal/retiral benefits and further action in
making recovery from the same.

Counsel for the petitioner submits that though the retiral benefits
have now been paid but have been paid after a delay of 8 months. He further
submits that the recovery also cannot be sustained in view of the law laid down
by Apex Court in *State of Punjab & others Vs. Rafiq Masih (White Washer)*
etc., (2015) 4 SCC 334.

Reply on behalf of respondents has been filed, wherein no
justification has been afforded for making recovery from the retiral benefits of
the petitioner, who was working as LDC. Apart from that law w.r.t. effecting
recovery from Group 'C' employee has been well laid down by Apex Court in

Rafiq Masih's case (supra) wherein it has been 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.”*

In the present case, the case of the respondents is that the pay of the petitioner was fixed after giving bunching benefits on 1st of January, 1996 and in addition to this, the petitioner was also granted benefit of additional increment which ought to have been granted only after lapse of period of 4 years from the grant of such bunching benefit. However, respondent-Corporation does not dispute that such benefit granted to the petitioner in the year 1996 was not on account of any misrepresentation attributable to the petitioner. Admittedly, the petitioner retired on 31st of January, 2020. The error that crept in the year 1996 is being sought to be corrected thereafter.

In view of the aforesaid fact the action of the respondents in making recovery from the retiral benefits of the petitioner cannot be sustained.

Communication dated 7th of February, 2020 issued by respondent No.4 ordering

recovery of an amount of Rs.1,29,604/- is hereby ordered to be quashed. The petitioner is held entitled for refund of the recovered amount along with interest @ 6 per cent per annum and at the same rate on the delayed payments calculated for the period starting from 30th of April, 2020 (i.e. 3 months from the date of retirement of the petitioner i.e. 31st of January, 2020) till the date of actual realization. Respondents are directed to release the aforesaid benefits to the petitioner within a period of 8 weeks from the date of receipt of certified copy of this order.

(PANKAJ JAIN)
JUDGE

02.02.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No