

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

**CWP No.18599 of 2016
Date of decision : 18.05.2023**

Ramesh Lal Gupta and othersPetitioners

Versus

Punjab Water Resources and othersRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Aasksh Singla, Advocate
for the petitioners.

Mr. Amit Singh Sethi, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking writ in the nature of certiorari quashing the impugned calculations/orders dated 23rd of October, 2015, 2nd of May, 2013, 12th of March, 2015 and 15th of October, 2013 whereby recovery of enhanced salary on account of proficiency step-up granted to the petitioners has been ordered.

2. The petitioners initially were appointed as S.O.s with respondent-Corporation. Thereafter they got promoted as S.D.E.s (Charge Holder). On completion of 24 years of service, the petitioners were granted second proficiency step-up @ Rs.275/- per month as per Punjab Government letter No.7/3/5-PPI/12851 dated 25.09.1998. Petitioners retired from the services on attaining the age of

superannuation on 31st of May, 2013, 31st of October, 2014, 31st of December, 2011 and 30th of November, 2013, respectively. However, vide impugned orders (Annexure P-3 to P-7) excess/enhanced salary paid to the petitioners on account of benefit of 24 years proficiency step up extended to them was ordered to be recovered from their retiral benefits.

3. Counsel for the petitioners submits that the step-up was granted to the petitioners by the respondents on the basis of Punjab Government's letter dated 25th of September, 1998. There was no fraud or misrepresenting on the part of petitioners at the time of claiming proficiency step up. In fact, the same had been given by the respondents on its own. Moreover, whole of the exercise has been done without issuing any notice to the petitioners 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. Per contra, Counsel appearing for the respondents submits that the petitioners had been paid the excess amount/salary on account of wrong benefits of proficiency step-up and the same needs to be recovered from them. However, he is not in position to dispute the factual assertions made by counsel for the petitioners with respect to non-service of notice and the same being in the teeth of law laid down in **Rafiq Masih's** case supra.

5. I have heard counsel for the parties and have gone through records of the case.

6. The fact which cannot be disputed is that proficiency step-up given to the petitioners is an issue that relates to the year 2003. The petitioners were drawing their enhanced salaries w.e.f. the different dates they were granted benefit of proficiency step-up till the day they retired from the services. After a long decade, vide impugned notices recovery has been ordered without issuing any notice to the petitioners. The law in this regard is well settled by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra), wherein it has been held that :

“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.”

7. In view of the above, this Court finds that the action of the respondents is not only in violation of principles of natural justice but also in teeth of law laid down by the Apex Court in *Rafiq Masih's* case (supra) as the petitioners are already retired from services. I may hastenly add here that admittedly there was no misrepresentation ever on behalf of petitioners thus such recoveries would not be permissible. Consequently, impugned orders (Annexure P-3 to P-7) are hereby quashed.

8. Respondents are directed to refund the amount, if any already recovered, to the petitioners with interest @ 6% per annum from the date of recovery, within a period of 8 weeks from the date of receipt of certified copy of this order. In case, the needful is not done within the time frame stipulated herein above, then the respondents shall be liable to pay the amount so recovered with interest @ 9% per annum from the date of recovery till its actual realization.

9. The writ petition stands disposed off accordingly.

May 18, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No