

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

**CWP No.26764 of 2016 (O&M)
Date of decision : 03.02.2023**

Sital Kumar

..... Petitioner

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Virinder Kumar Shukla, Advocate
for the petitioner.

Mr. Sehajbir S.Aulakh, Asstt. A.G., Punjab.

Mr. Tarun Vir Singh Lehal, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

Petitioner seeks writ in the nature of Certiorari quashing the impugned order dated 30.09.2006 (Annexure P-2) whereby pay of the petitioner has been re-fixed and that dated 30.09.2006 whereby as a consequence of Annexure P-2 retiral benefits of the petitioner have been re-fixed and recovery of Rs. 56,986/- is ordered to be effectuated.

Petitioner was working as Clerk. His services were regularized w.e.f. 27.07.1992. He retired from services on attaining the age of superannuation on 28.02.2011. The adhoc service rendered by the petitioner was also counted for increments etc. However later on vide impugned order pay of the petitioner was sought to be re-fixed and a recovery of Rs.56,986/- was ordered to be made by Annexure P-4.

Learned 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*** as the petitioner is a Class-III employee and the same ought not have been recovered in the manner.

Learned counsel for respondent No.3 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.

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. 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.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

03.02.2023

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No