

**In the High Court for the States of Punjab and Haryana  
At Chandigarh**

CWP-8347-2018 (O&M)  
Date of Decision:-05.07.2023

Arvinder Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Sunny Singla, Advocate, for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

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**GURVINDER SINGH GILL, J.**(Oral)

1. The petitioner assails order dated 23.1.2018 (Annexure P-4) passed by the respondents vide which the benefit granted vide order dated 27.4.1998 (Annexure P-1) w.e.f. 01.01.1996 to the petitioner with respect to grant of annual increment at par with Ravinder Singh, Clerk has been ordered to be withdrawn.
2. The sole contention raised by learned counsel for the petitioner so as to assail the aforesaid order of recovery is that the said order has been passed in the year 2018 in respect of the increment which was granted in the year 1998 w.e.f. 1996 i.e. after a period of more than 22 years.
3. Learned counsel for the petitioner submits that the petitioner retired from service w.e.f. 30.11.2018 that when the impugned order was passed she had less than one year of service before retirement.

4. Learned counsel for the petitioner places reliance upon instructions dated 28.8.2015 issued by Government of Punjab pursuant to a decision of Hon'ble Supreme Court in Civil Appeal No.11527 of 2014 out of SLP(C) No.11684 of 2012 titled as State of Punjab and others Vs. Rafiq Masih and others. The relevant extract from the said instructions reads 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, summaries 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 for outweigh the equitable balance of the employer's right to recover.”

5. Having regard to the fact that the petitioner is a retired employee and that the impugned order was passed within less than one year before her retirement and pertains to a benefit which had been extended 22 years back, this Court is of the opinion that the recovery of amount in question would not be justified at this belated stage particularly when there are instructions also in support of the case of the petitioner. The petition, as such, is accepted and the impugned order dated 23.1.2018 (Annexure P-4) is set aside.
6. In case any pensionary benefits have been withheld the same are ordered to be released to the petitioner expeditiously subject to completion of any formalities, as may be required.

05.07.2023

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( GURVINDER SINGH GILL )  
JUDGE

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|----------------------------|----------|
| Whether speaking /reasoned | Yes / No |
| Whether Reportable         | Yes / No |