

CWP-35611-2019  
Date of decision 01.02.2023

SUDARSHAN KUMAR

....Petitioner

Verses

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Sandeep, Addl. A.G., Punjab.

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**JASGURPREET SINGH PURI, J (Oral):**

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking writ in the nature of Certiorari for quashing of orders dated 06.10.2019 (Annexure P-5) and 29.10.2019 (Annexure P-6).

Learned counsel for the petitioner has submitted that the petitioner retired as Lecturer on 30.06.2011 from Government Senior Secondary School-respondent No.5 and during his service an increment was given to him in the year 1993 on the basis of promotion and thereafter his pay was also fixed accordingly. He further submitted that after 8 years of his retirement, the impugned orders Annexure P-5 and P-6 have been passed to which an amount of Rs.24,067/- has been deducted from the petitioner on the ground that in the year 1993, he had not given option and he was wrongly paid and the date of increment was wrong. He has further submitted that the action of the respondent in passing the impugned order and recovery of an amount of Rs.24,067/- is totally contrary to law laid down by Hon'ble Supreme Court in "*State of Punjab and others etc.*

instructions issued by the Punjab Government dated 28.08.2015 & 20.10.2016. He has submitted that he confines the scope of the present petition only to the extent of recovery of the aforesaid amount.

On the other hand, learned State counsel has submitted that the petitioner was granted undue benefit and the State tried to recover the same.

I have heard the learned counsel for the parties.

The present is a case which is *prima facie* covered by the judgment titled as ***State of punjab and others etc. v Rafiq Masih case (supra)*** and also instructions dated 28.08.2015 & 20.10.2016 issued by the State of Punjab itself. The relevant portion in para 18 of the judgment in ***State of punjab and others etc. v Rafiq Masih case (supra)*** is reproduced as under:

*“18. 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.”*

The case of the present petition clearly falls in Clause 2 and 3 of the aforesaid judgment.

In view of the above, the present petition is allowed and impugned order Annexure P-5 & P-6 is hereby quashed and it is directed that the respondents are not entitled for the recovery of the aforesaid amount from the petitioner.

In view of the above facts and circumstances, the present petition is allowed.

**(JASGURPREET SINGH PURI)**  
**JUDGE**

**01.02.2023**  
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| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |