

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

Date of Decision : 08-08-2024

.....Petitioner

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

Present: Mr. Raghav Gulati, Advocate for the petitioner.

Mr. Satnampreet Singh Chauhan, Sr. DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the challenge is to the order dated 10.12.2021, copy of which has been appended as Annexure P-3 by which, by withdrawing a particular increment, the return has also been ordered.

Learned counsel for the petitioner submits that though the petitioner is not challenging the withdrawal of the increment but no recovery of the excess amount paid can be done from the petitioner as, the petitioner was working on a Class-III Post and the petitioner had continued to get the increment, which was withdrawn, for more than a period of five years, keeping in view the judgment of the Hon'ble Supreme Court of India in India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T, 195***, wherein it has been held that no recovery of the excess amount already paid can be done from the petitioner.

Learned counsel for the respondents on the other hand submits that once it has come to the knowledge of the State that the petitioner was

paid beyond his entitlement, the Government was well within its right to recover the amount, which was paid to the petitioner over and above his entitlement.

I have heard learned counsel for the parties and have gone through the records of the present case with this able assistance.

As per the settled principle of law laid by Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***, no recovery can be done from a Class-III and IV employee and further, no recovery can be done in case, the relief which is sought to be withdrawn, due to which the excess amount is being recovered, was paid for a period of five years. The relevant paragraph 12 of the judgment of the Hon'ble Supreme Court is an under:

"12. Reference may first of all made to the decision in Syed Abdul Qadir v. State of Bihar, wherein this Court recorded the following observation in para 58: (SCC p. 491)

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial d. discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana³, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Directors, B.J. Akkara v. Govt. of India, Purshottam Lal Das v. State of Bihar 10, Punjab

National Bank v. Manjeet Singh¹¹ and Bihar SEB v. Bijay Bhadur¹²" (emphasis supplied)"

In the present case, the petitioner is a working as SS Master, which is a Class-III Post and further the benefit was given to the petitioner along with all the increments in the year 2011 whereas, the same was withdrawn in the year 2021 after a period of ten years hence, keeping in view the judgment of the Hon'ble Supreme Court of India in **Rafiq Masih's case(supra)**, no recovery can be made from the petitioner.

Learned counsel for the respondents has not been able to show as to how, keeping in view the judgement of Hon'ble Supreme Court of India in **Rafiq Masih's case(supra)**, the recovery can be made.

Keeping in view of the above, the order dated 10.12.2021 (Annexure P-3) is contrary to the settled principle of law hence, the same is accordingly set aside.

Any recovery done from the petitioner be refunded back to him within a period of eight weeks from the receipt of copy of this order.

No other arguments raised for the interference by this Court in the present petition hence, the present petition is disposed of.

Ordered accordingly.

08-08-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking : YES/NO
Whether reportable: YES/NO