



IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CWP-8837-2023 (O&M)  
Date of Decision:06.11.2024

Kamlesh Sehrawat

.....Petitioner

Versus

Haryana State Warehousing Corporation

.....Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. Deepak Sonak, Advocate for the petitioner.

Mr. Dhananjay Mittal, Advocate for respondent.

\*\*\*\*\*

**JASGURPREET SINGH PURI J.(Oral)**

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for setting aside the impugned orders dated 22.12.2022 (Annexure P-10) and 14.08.2019 (Annexure P-7) whereby the case of the petitioner for release of the withheld Gratuity amount of Rs. 1,49,347/- has been rejected.

2. Learned counsel for the petitioner submitted that the petitioner was working as an Accounts Clerk in the office of respondent-Corporation and she retired on 30.09.2008 upon attaining the age of superannuation. He submitted that while the petitioner was in service, the respondent while fixing the payscale of the petitioner alongwith other similarly situated persons had granted certain benefits to the petitioner in the year 1981. However, the aforesaid grant of benefit which was given to the petitioner and other similarly situated persons was subsequently rectified and was



withdrawn. It was after the retirement of the petitioner on 30.09.2008 an amount of Rs.1,49,347/- was deducted from the gratuity of the petitioner. He submitted that it is a well settled law that once an employee has retired from service, no such amount can be recovered from the pension or gratuity of an employee because it is not only violation of the law laid down by Hon'ble Supreme Court but also violation of the Right to Property under Article 300-A of the Constitution of India. He also asserted that the post of Accounts Clerk falls under Category C and in this regard he referred to the judgment of Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih (White Washer etc.) (2015) 4 SCC 334***. He submitted that the recovery made from the gratuity of the petitioner is absolutely unsustainable and contrary to the aforesaid judgment of Hon'ble Supreme Court.

3. On the other hand, learned counsel appearing on behalf of respondent submitted that so far as proposition of law which has been so laid down by Hon'ble Supreme Court is concerned, the same is not disputed and the same will be applicable to the present case. He submitted that the petitioner cannot claim parity with respect to the other judgments vide Annexures P-2 and P-3 as the petitioner was not a party to the aforesaid writ petitions.

4. I have heard learned counsels for the parties.

5. The objection raised by learned counsel for the respondent that the petitioner was not a party to the aforesaid judgments passed by this Court filed by similarly situated persons vide Annexures P-2 and P-3 is concerned, the same is unsustainable as it is not necessary that the



petitioner ought to have been a party in the aforesaid petitions because the petitioner is standing on his own feet by alleging that no recovery could have been effected from the gratuity of the petitioner after retirement for the amount which was given by the respondent-Corporation itself on the basis of grant of some pay-scale and it was not a case of any fraud committed by the petitioner. The petitioner was a Class-C employee. The concluding part of the judgment of Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih's*** 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 hereinabove, 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 ClassIV service (or Group C and Group D service).*

*(ii) Recovery from the 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.”*

6. After hearing learned counsel for the parties and in light of the conclusions drawn by Hon'ble Supreme Court in **Rafiq Masih's case (supra)**, the case of the petitioner is squarely covered by the judgment of Hon'ble Supreme Court. The petitioner was a Category-C employee and it is not a case where the petitioner had made any fraud or misappropriation.
7. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondent is directed to refund to the petitioner the aforesaid amount of Rs.1,49,347/- alongwith interest @ 6% per annum (Simple) which shall be calculated from the date of retirement plus two months till the date of payment to the petitioner within a period of three months from today.
8. In case the aforesaid amount is not paid to the petitioner within the aforesaid stipulated time frame then the petitioner shall be entitled for future rate of interest @9% (simple) per annum.
9. The petitioner shall also be entitled for costs of Rs.10,000/- which shall also be paid to the petitioner within the aforesaid time frame.

(JASGURPREET SINGH PURI)  
JUDGE

06.11.2024  
shweta

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No