

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16710-2020
Date of decision: 04.04.2024

MOTI LAL AND ORS Petitioners
versus

STATE OF HARYANA AND OTHERS Respondents

CORAM : HON'BLE MR.JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Maninder Arora, Advocate
for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. Learned counsel for the petitioners argued that the certain amount have been recovered from the petitioners, which should be refunded. Learned State counsel on the other hand, submits that no details of the amount which has been recovered from the petitioners has been furnished to them and as per his instructions, no recovery of any amount has been done from the petitioners so far.

2. At this stage, the learned counsel for the petitioner submits that no recovery can be done from a Class-III and Class-IV employee keeping in view of the judgment of the Hon'ble Supreme of India in ***Civil Appeal No. 11527 of 2014 titled as State of Punjab and Others Vs. Rafiq Masih decided on 18.12.2014*** hence, even otherwise, the notice given by the respondent is bad qua the recovery of any amount from the salary of the petitioner.

3. Learned counsel for the respondent has not been able to rebut that keeping in view the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and Others Vs. Rafiq Masih***, no recovery can be done from a Class-III and Class-IV employee and it is also a conceded position that all the petitioners are working as Mechanic on a Class-III post.

4. I have heard the learned counsel for the parties and have gone through the record with their able assistance.

5. Once, the amount which was paid to the petitioner in excess has not been obtained through any fraud or mis- representation and the same was paid by the respondent on their own, keeping in view the judgment of Hon'ble Supreme Court of India in ***Civil Appeal No. 11527 of 2014 titled as State of Punjab and Others Vs. Rafiq Masih decided on 18.12.2014*** stating that no recovery can be made in case the employee concerned is working on a Class-III and Class-IV post, no recovery can be done from the petitioners. The relevant paragraph 12 of the judgment is 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, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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.”

6. Learned counsel for the respondent has not been able to rebut as to under what circumstances, the recovery can be done from the petitioners who are working as an employee on the Class-III post.
7. Keeping in view of the above, it is directed that no recovery be done from the petitioners in respect of the notice given to them.
8. Present petition is allowed in above stated terms.

(HARSIMRAN SINGH SETHI)
JUDGE

04.04.2024

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