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

CWP-20843-2016

Date of Decision:05.03.2024

YOG RAJ

..... Petitioner

*Versus***BHAKRA BEAS MANAGEMENT BOARD & ORS** Respondents**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Mr. Vijay Lath, Advocate with
Mr. Ajay S. Dhiman, Advocate for the petitioner.

Mr. Abhinav Chadha, Advocate for
Mr. Vinod Kumar, Advocate for respondents No.1 to 4.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of order dated 12.05.2015 (Annexure P-12) whereby respondent has ordered to recover a sum of ₹2,08,790/-. The petitioner is further seeking direction to respondents to fix his salary in accordance with law.

2. The petitioner on 30.03.1982 joined respondent as Process Server. He retired from the same post on 31.07.2015. It was a Class-IV post. The respondent by order dated 10.05.2015 (Annexure P-2) has ordered to recover a sum of ₹2,08,790/- alleging that his pay was wrongly fixed and there is excess payment of said amount which needs to be recovered.

3. Mr. Vijay Lath, Advocate submits that petitioner was Class -IV employee and impugned order was passed within 1 year prior to his

date of retirement, thus, his case is squarely covered by judgment of Supreme Court in '*State of Punjab Vs. Rafiq Masih (White Washer) etc.*' 2015 (4) SCC 334.

4. Mr. Abhinav Chadha, Advocate submits that they have ordered to recover and thereafter actually recovered aforesaid amount on the direction of Parent Department of the petitioner. He expressed his inability to controvert the fact that case of the petitioner is squarely covered by judgment of Supreme Court in *Rafiq Masih* (supra).

5. Learned State counsel submits that pay of the petitioner was wrongly fixed and on realizing mistake correct amount of pay was fixed, thus, order of recovery was passed. He concedes that case of the petitioner is squarely covered by aforesaid judgment of Supreme Court.

6. The petitioner was due to retire on 31.07.2015 and impugned order came to be passed on 10.05.2015 i.e. within 1 year prior to his date of retirement. The petitioner was Class-IV employee.

Hon'ble Supreme Court in *Rafiq Masih* (supra) has categorically held that no recovery on account of excess payment of salary can be made from Class-IV employees. The Court has further held that recovery should not be made from retirees or where an employee is going to retire within 1 year. The relevant extracts of the judgment read as:

"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 the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the 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.”*

7. The case of the petitioner is squarely covered by aforesaid judgment, thus, present petition deserves to be allowed and accordingly allowed. The respondent has already recovered aforesaid amount, thus, respondent is directed to refund the said amount within 3 months from today. The respondents are at liberty to assess correct pension of the petitioner which he would be entitled from the date of his retirement.

(JAGMOHAN BANSAL)
JUDGE

05.03.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No