



222

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

CWP-7699-2001 (O&M)

Date of Decision : 28-04-2025

STATE OF HARYANA AND ANR.

.....Petitioner(s)

VERSUS

MANGAL SINGH AND ANR.

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Saurabh Girdhar, AAG Haryana
For the petitioners.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the award dated 12.10.2000, copy of which has been appended as Annexure P-1 by which, the respondent No.1-Workman was directed to be reinstated in service along with full backwages from the date of the demand notice i.e. 13.12.1993. It may be noticed that though notice of motion was issued but, the operation of the aforementioned award was not stayed.

2. Learned counsel appearing on behalf of the respondent No.1-Workman submits that the workman was reinstated and he was already paid the backwages and has also retired from service in the year 2017.

3. Though, certain issues arose as to whether, the grant of full backwages was justifiable in the facts and circumstances of the present case, but as the writ petition was filed 24 years ago and there was no interim order and the impugned award dated 12.10.2000 (Annexure P-1) has already been

implemented, this Court restrains from interfering in the aforementioned award especially when the respondent No.1-Workman has also retired from services for the last more than 7 years.

4. Applying of non-grant of the backwages is on a different pedestrian as compared to withdrawing of getting the backwages which has already been paid to respondent No.1-retired employee was extended under the award.

5. The question which arises for consideration is whether, even if this Court finds that the full backwages granted by the Labour Court were not justified, the same can be withdrawn after the payment of the same especially when the employee has already retired.

6. The said question is to be considered in light of the settled principle of law whether any recovery can be made from a retired presentee or not. Reliance can be placed upon the judgment of the Hon'ble Supreme Court of 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 where an excess amount has been paid to an employee beyond his/her entitlement, even the same cannot be recovered after the retirement. The relevant paragraph 12 of the said judgment is as under:-

“12. 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. Keeping in view the abovesaid law, once he backwages have already been paid to the employee by leaving the question of law open, the award dated 12.10.2000 passed by favour of the respondent No.1-Workman is upheld and the writ petition is dismissed.

7. Pending application, if any, also stands disposed of.

28-04-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO