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**ALLAHABAD HIGH COURT (LUCKNOW BENCH)**

DIVISION BENCH

MATA PRASAD — Appellant

Vs.

PRINCIPAL SECY. FINANCE CIVIL SECTT. LKO. AND OTHERS —

Respondent

( Before : Shri Narayan Shukla and Akhtar Husain Khan, JJ. )

Writ Petition No. 694 of 2010

Decided on : 15-09-2015

**A. Service Law — Recovery of excess payment — Retired employees — Applicability of Rafiq Masih (White Washer) case — The Supreme Court in State of Punjab and others v. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334, held that recovery of excess payment from retired employees is impermissible in law — Present case involves recovery order issued four and a half years after the petitioner's retirement — Such recovery is unsustainable and the impugned recovery memo is quashed — Any amount already recovered must be refunded. (Paras 4, 5, 6, 7)**

**Counsel for Appearing Parties**

*R.S. Pande, Advocate, for the Appellant; C.S.C., Gaurav Mehrotra and Manish Kumar, Advocates, for the Respondent*

**Cases Referred**

- [State of Punjab Vs. Rafiq Masih, \(White Washer\), \(2015\) 4 SCC 334](#)

Final Result : Allowed

**JUDGMENT**

1. Heard Dr. R.S. Pande, learned counsel for the petitioner as well as Mr. Gaurav Mehrotra, learned counsel for the respondents.
2. The petitioner has assailed the Office Memo dated 20.11.2009 issued by the Deputy Registrar (Accounts) communicating the decision of Hon'ble the Chief Justice dated 02.11.2004 to recover a total sum of Rs.34,955/- paid to the petitioner in excess to his entitlement on the post of Assistant Registrar as well as the Deputy Registrar. The period for payment in excess has been enumerated as w.e.f. 14.08.2003 to January, 2004 and February, 2004 to September, 2004.
3. The petitioner while working on the post of Deputy Registrar retired from service on 28.02.2005. The impugned order was issued to the petitioner on 20.11.2009 i.e. after about four and a half years from the date of his retirement.
4. In view of the aforesaid facts, learned counsel for the petitioner has submitted that such a case has been dealt with by the Hon'ble Supreme Court in the case of **State of Punjab and others v. Rafiq Masih (White Washer) and others; (2015) 4 SCC 334**. The Hon'ble Supreme Court had discussed each and every aspect on the point of recovery of the amount paid in excess of their entitlement to the employees and has laid down the following proposition of law, which is reproduced below:

"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 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."
5. Learned counsel for the petitioner urged that the petitioner's case is fully covered under

clause-ii as enumerated above. He is retired employee, therefore, the proposed recovery should not be made from him. The petitioner's retirement from service is not disputed.

6. In view of the law laid down by the Hon'ble Supreme Court, we are of the view that the recovery notice issued to the petitioner after about four and a half years from his retirement, is unsustainable. Therefore, we hereby quash the Office Memo dated 20.11.2009.

7. At this stage, we are informed that the proposed amount has already been recovered from the amount of leave encashment, therefore, it requires direction of this Court to the respondents to refund the same to the petitioner. Since we have held that the amount as proposed is not recoverable, we hereby direct the respondents to refund the amount, already recovered, to the petitioner within one month from the date of communication of this order.

8. The writ petition is, accordingly, allowed.