IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6358 of 2005 (O&M)
Date of decision: 06.05.2015

Surinder Kumar Kansal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Madhav Pokhrel, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab
for the State.

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Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Article 226 of the Constitution of India, the petitioner seeks quashing of the impugned order No. 1040 dated 08.01.2005 (Annexure P-11), issued by respondent No.4, vide which the recovery has been effected out of the pensionary benefits of the petitioner by respondent No.2.

2. It is contended that initially the petitioner joined as Hindi teacher on ad-hoc basis on 26.10.1971 and later on his services were regularized w.e.f. 01.04.1977. After attaining the age of superannuation and rendering more than 20 years of regular service, the petitioner retired on 30.09.2004. Vide order dated 10.09.2004, the Accountant General Punjab issued certificate and report-cum-

gratuity payment order sanctioning the payment of DCRG and pension. Thereafter, the local audit officer audited the accounts of the institution and raised an objection that the petitioner got exces amount of Rs. 16755/- on account of wrong stepping up of grade, vide Annexure P-2. The learned counsel refers to Annexure P-3 and states that the petitioner had also submitted an application to the Headmistress, Govt. High School, Parachh (Roopnagar), stating that his junior Sh. Rajinder Kumar, Hindi Teacher was getting more pay than him but the objection was not removed. The petitioner had also submitted a representation (Annexure P-8) to respondent No.3 for issuance of 'No Objection Certificate'. The respondent No.3 directed the respondent No.4 to release the gratuity after making the deduction of the amount of recovery from the petitioner as per the directions of the Accountant General, Punjab. The learned counsel submits that once the petitioner had retired from service, the Department had no right to recover the amount from his pensionary benefits.

3. On the other hand, the learned State counsel submits that the office of Accountant General, Punjab raised an objection regarding excess payment made to the petitioner as a consequence of which, the recovery proceedings were initiated.

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

5. In **State of Punjab and others** Vs. **Rafiq Masih**, rendered in *Civil Appeal No. 11527 of 2014*, the Hon'ble Apex Court has held 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:*
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> *(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.*

6. In the present case, the services of the petitioner were regularized on 01.04.1977 and he retired on 30.09.2004. The office of the Account General (A&E), Punjab, Chandigarh issued certificate regarding admissibility of pension/DCRG in favour of the petitioner, vide order dated 15.09.2004 (Annexure P-1). Once the pension and other retiral benefits have been released in favour of the petitioner by the competent authority, the same cannot be recovered. The impugned order was passed on 08.01.2005 (Annexure P-11),

after the retirement of the petitioner. The amount, if paid, in excess, is not on account of any lapse or misrepresentation on the part of the petitioner; it is the department who granted him such a payment, believing that the petitioner is entitled to it.

6. Therefore, keeping in view the above, the instant petition is allowed. The impugned order dated 08.01.2005 (Annexure P-11), issued by respondent No.4 is set aside. The respondents are directed to refund the recovered amount and other benefits, if any, within a period of three months from the date of receipt of a certified copy of this order.

06.05.2015 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**