

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 14049 of 2013 (O&M)

Date of decision: 18.02.2015

Krishan Kanta

.. Petitioner

versus

State of Punjab and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Surinder Garg, Advocate, for the petitioner.
Mr. Pavit Singh Mattewal, Addl. Advocate General, Punjab.
Mr. Eklavya Gupta, Advocate for
Mr. Ashok Gupta, Advocate for respondent No.5.

....

Rajesh Bindal, J.

The petitioner, who retired on 30.11.2002 as Head Teacher, has filed the present petition, challenging the action of the respondents, whereby recovery of certain amount, allegedly excess paid to the petitioner on the account of wrong fixation of pay w.e.f. 01.01.1988 onwards, was sought to be made. It is stated in the reply filed by the State that the petitioner was entitled to pension @ ₹ 4,260/- per month instead of ₹ 4,525/- per month in terms of re-fixation of her pay before retirement. The intimation was given to the petitioner by the Bank for the recovery to be effected from the monthly pension being paid to the petitioner. Prior to that no notice was issued to the petitioner.

Learned counsel for the parties did not dispute the fact that the issue involved in the present petition is squarely covered by judgment of Hon'ble the Supreme Court in State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2015(1) RSJ 177. The relevant para of the judgment is extracted below:-

“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."

In view of the aforesaid enunciation of law by Hon'ble the Supreme Court in aforesaid judgment, the recovery sought to be made from the petitioner for a period of more than five years after she retired, the same deserves to be set aside. Any amount already recovered from the petitioner be paid to her. However, the fixation of pension as such is not in dispute as even the petitioner at the time of issuance of notice of motion had stated that relief is restricted to recovery of the amount allegedly excess paid to the petitioner.

Writ petition is disposed of.

18.02.2015
Kumud

(Rajesh Bindal)
Judge