IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16340 of 2013
Date of Decision: 27.08.2015

Kashmir Singh

... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. G.S. Thind, Advocate,
for the petitioner.

Mr. Nikhil K. Chopra, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The petitioner is a retired person. He superannuated on November 30, 2008. The State has passed an of recovery of over-payment of money by mistake on account of annual increments granted in the year 1996 on completion of 16 years of service which the petitioner was not entitled to draw.

The excess benefit was withdrawn on August 01, 2008 by the impugned order with retrospective effect from January 01, 1996.

It is urged that if the impugned order is allowed to stand it will cause undue hardship to the petitioner and have grave adverse effect on his pension and pensionary dues of the petitioner as a consequence flowing from the impugned order (P-2). Needless to say that pension is a recurring right and a continuing obligation of the State towards its pensioners and a

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right in property protected by Art. 300-A of the Constitution of India.

The subject of recovery of excess payments made by employer mistakenly and in excess of entitlement where no fault or fraud is attributed to the employees nor have they practiced deceit in obtaining an undue financial advantage for themselves, then in such cases several exceptions have been carved out which come to the rescue of employees. For the proposition see **Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors.**, (2012) 8 SCC 417 and more comprehensively in a pronouncement of the Supreme Court in **State of Punjab vs. Rafiq Masih,** (2014) 8 SCC 883 and connected cases where the following principles have been culled out in para. 12 of the report for the guidance of the executive and the court with respect to rights of sufferers of surprise recoveries started by government departments against its serving and retired employees, holding as follows:-

> *"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, summarize 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) <u>Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery</u>.*
>
> *(iii) <u>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.</u>*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has*

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> *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.*

The case of the petitioner falls squarely within the available defences indicated in sub paragraphs (ii), (iii) and (v) above against recovery and, therefore, the impugned order is not sustainable and is liable to be set aside.

As a result, the writ petition is allowed and the impugned order dated August 01, 2008 (P-2) is quashed by certiorari. The respondent State is directed by mandamus to refund the amounts deposited by the petitioner in pursuance of the impugned order within a period of three months from the date the certified copy of this order is served on the respondents. The petitioner would also be entitled to interest @ 8% on the amounts recovered.

(RAJIV NARAIN RAINA)
JUDGE

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