

In the High Court of Punjab and Haryana at
Chandigarh.

CWP-1468-2014

Date of decision : 05.11.2015

BHARPUR SINGH

Petitioner

Vs.

PRTC AND ORS

Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL.

Present:- Mr. Vikas Chatrath, Advocate, and
Ms. Neeru Thakur, Advocate,
for the petitioner.

Mr. Aayush Arora, Advocate,
for the respondents.

LISA GILL, J. (Oral)

Prayer in this writ petition is for quashing of order dated 09.11.2012 (Annexure P-4) whereby pay of the petitioner has been reduced alongwith consequential reduction in pensionary benefits. It is contended by counsel for the petitioner that recovery and reduction of pay is in violation of the principles of natural justice as there has been no misrepresentation or fraud on his part. It is further contended that said action on part of the respondent-corporation is illegal and arbitrary, consequently the same is liable to be set aside.

Written statement on behalf of the respondents has been filed in court today with a copy thereof to learned counsel for the petitioner. Same is taken on record subject to just exceptions.

It is accepted by the corporation that the petitioner who superannuated on attaining the age of 58 years on 29.02.2012 was granted benefits as per ACP Scales on completion of 8, 16 and 24 years of service. It is at the time of preparation of petitioner's pension case that it came to light that his salary had been wrongly fixed as on 01.04.1994. In this view of the matter, his pay was refixed vide impugned memo dated 09.11.2012 (Annexure P-4), admittedly passed after his retirement.

Learned counsel for the respondents is unable to dispute that no notice whatsoever was ever served upon the petitioner before refixation of his pay vide order dated 09.11.2012. Petitioner had been receiving the pay before impugned order since over twenty years. It is, in fact, urged that no opportunity is required to be afforded to the petitioner as it is only a correction of wrong entry made by the officials of the respondents while fixing petitioner's pay. It is, however, not disputed that there was no misrepresentation or concealment on the part of the

petitioner who has been receiving the said pay since the last so many years till the passing of the impugned order.

Impugned order (Annexure P-4) reveals that no reason for effecting refixation of petitioner's pay and consequential pensionary benefits has been assigned. In the written statement, it is mentioned that recovery of the excess amount paid has been ordered to be made as per order No. 432 dated 09.11.2012, though the impugned order does not mention the consequential recovery.

Be that as it may, in view of the decision of a Full Bench of this Court in the matter of **Budh Ram Versus State of Haryana and others, 2009(3) SCT 333 (F.B.)** that where there is no misrepresentation, deception or concealment by the employee for receiving monetary benefits, no such recovery can be effected from an employee. Hon'ble Supreme Court in **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc., 2015(1) SCT 195** has specifically held recovery in such a situation to be impermissible.

Consequently, this writ petition is allowed. Impugned order dated 09.11.2012, Annexure P-4, is set aside. It is directed that no recovery pursuant to the impugned order dated 09.11.2012 (Annexure P-4) be effected from the petitioner. It is, however, clarified that it is

open to the respondents to take steps for refixation of petitioner's pay in accordance with the rules and Government instructions and principles of natural justice, including an opportunity of personal hearing to the petitioner.

**(LISA GILL)
JUDGE**

November 05, 2015.
Anoop