IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 15371 of 2014

DATE OF DECISION: 25.05.2015

Ranjit Kaur ....Petitioner

Versus

State of Punjab and others ....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present:- Mr. Rajinder Sharma, Advocate
for the petitioner.

Mr. Anil Sharma, Addl. A.G., Punjab.

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DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside order dated 16.6.2014 (Annexure P-6), vide which, the pay of the petitioner has been revised after retirement on account of wrong fixation of pay while granting benefit of 16/24 years of service and order for recovery of ₹ 90,410/- has been passed.

Learned counsel for the petitioner at the very outset submits that the petitioner would not challenge refixation of her salary but restrict her prayer to the extent that the recovery should not be made. Learned counsel further submits that no opportunity of hearing was afforded to the petitioner while refixing her salary. The benefit of 16/24 years of service was given to the petitioner in the year 1994/2002 while she was working as Junior Assistant and accordingly her pay was refixed and the same was continued till the date of her retirement i.e. 30.6.2013. The petitioner was granted provisional pension and inspite of the fact that amount of gratuity was sanctioned on 15.5.2014, the same was not released. The order of recovery has been passed on account of refixation of her pay and because of that reason the amount of gratuity was not released. Learned counsel also submits that under the similar circumstances C.W.P. No. 15397 of 2012 titled as **Smt. Ranjit Kaur Vs. State of Punjab and others** has been filed, wherein also, order of recovery was passed on the basis of wrong fixation of pay after completion of 16/24 years of service. The said petition was partly allowed on 11.9.2013 and the respondents were directed not to make any further recovery from the petitioner. They were also directed to release the amount due towards retiral benefits within a period of two months from the date of receipt of certified copy of this order.

Short reply on behalf of respondent No.3 has been filed in the Court today and the same is taken on record.

Learned counsel for the respondent-State has not disputed the order passed in **Ranjit Kaur's case (supra)** but has relied upon the judgment passed by Hon'ble the Apex Court in the case of **Chandi Prasad Uniyal and others Vs. State of Uttrakhand and others** reported in 2012 (8) SCC 417, wherein, it has been held that excess payment made can always be recovered at any time as it is public money which belongs neither to the officers who have effected over payment nor to the person who has received.

Heard the arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also gone through the impugned order and other documents available on the file.

After hearing the learned counsel for the parties, I am of the view that the excess amount which has been paid to the petitioner cannot be recovered in view of ratio of judgment passed in **Chandi Parsad Uniyal's case (supra)**, which carves an exception by relying upon the earlier judgments of the said Court that such benefits, which have been released to the employees during their service cannot be recovered from the retiral benefits. Paras 14 and 17 of the said judgment are relevant for resolving the controversy in the present case and the same are reproduced as under:-

> “14. We may point out that in **Syed Abdul Qadir case** such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.
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> 17. We are, therefore, of the considered view that except few instances pointed out in **Syed Abdul Qadir case** (supra) and in **Col. B.J. Akkara (retd.) case** (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.”

Moreover, learned counsel for the the petitioner in the present case has fairly submitted that the petitioner does not want to challenge refixation of salary but restricts her prayer only to the extent that recovery should not be made from her. The controversy in the present case is squarely covered by the decision of this Court in **Ranjit Kaur's case (supra)** as well as judgment of this Court in C.W.P. No. 21619 of 2011 **(Ruldu Ram @ Ruldu Singh Vs. Punjab State Electricity Board and others)** decided on 6.4.2015, wherein, judgment of Hon'ble the Apex Court in case of **State of Punjab Vs. Rafiq Masih (White Washer)** reported in 2015 All India Reporter (AIR) (Supreme Court 696) has been relied upon. In para 12 of **Rafiq Masih's case (supra)**, it has been 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-II and Class-IV service (or Group 'C' and Group 'D' service).
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> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (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.
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> (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.
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> (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 facts as mentioned above, the present petition is partly allowed and the respondents are directed not to make any recovery from the petitioner. They are also directed to pay the pending dues towards the retiral benefits to the petitioner within a period of two months from the date of receipt of certified copy of the order failing which the petitioner would be entitled to recover the same with interest at the rate of 8% per annum after three months of the date of retirement from the date of her retirement till the payment is made. No order as to costs.

May 25, 2015 **(DAYA CHAUDHARY)**
pooja **JUDGE**