

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-25100-2014 (O&M)

Date of decision: 06.04.2015

Subhash Chand Bansal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Amrik Singh, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of condition imposed vide letters dated 29.07.2013 (Annexure P-1), order dated 15.10.2013 (Annexure P-2), letter dated 06.08.2014 (Annexure P-3), letter dated 19.09.2014 (Annexure P-4), letter dated 21.10.2014 (Annexure P-6) and letter dated 14.11.2014 (Annexure P-8) issued by the respondents, whereby, the pay and consequent pension has been re-fixed and recovery has been ordered to be effected.

2. It is contended that the petitioner joined the Department of Irrigation, Punjab, as Junior Engineer on 24.09.1976. Thereafter on 25.12.2000, he was granted 24 years ACP. The petitioner retired

from service as S.D.O. on superannuation on 31.07.2013. The pension case of the petitioner was sent back by respondent No.4 stating therein that 24 years ACP was wrongly granted to the petitioner (Annexure P-1). The pay of the petitioner was re-fixed after withdrawing the benefit of 24 years ACP and an amount of Rs.1,31,305/- was sought to be recovered from the petitioner (Annexure P-4). The petitioner served a representation to the respondents on 17.08.2014 (Annexure P-11), requesting them not to effect the recovery and not to re-fix his pay. However, the said representation has not been considered.

3. On the other hand, the learned State counsel submits that the per the communication received from the office of the Accountant General, Punjab, vide letter dated 30.07.2013 (Annexure R-1/3), the benefit of 24 years ACP was wrongly allowed to the petitioner. In compliance of the above, the pay of the petitioner was re-fixed and the recovery has been ordered.

4. 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:

(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.

In the present case, the petitioner was granted the benefit of 24 years ACP on 25.12.2000, and he retired from service on superannuation on 31.07.2013, whereas, the recovery has been ordered vide office order No.4359 dated 15.10.2013. Thus, the case of the petitioner is squarely covered by the ratio of law as laid down in Rafiq Masih's case (supra). The amount paid in excess, if any, is not on account of any lapse on the part of the petitioner; it is the department which erred in granting him such a payment.

Therefore, keeping in view the above, the instant petition is allowed. The impugned orders/letters Annexures P-1, P-2, P-3, P-4, P-6 and P-8 are set aside. The respondents are directed to release all the pensionary benefits which are withheld, within a period of three months from the date of receipt of a certified copy of this order.

Disposed of.

06.04.2015
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(JITENDRA CHAUHAN)
JUDGE