IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6898 of 2015
Date of Decision: 9.10.2015

Upasna Attri … Petitioner

Versus

State of Punjab & ors. ... Respondents

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

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

Ms. Puneet Kaur Sekhon, Addl.A.G., Punjab.

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

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner retired as a Class III (Group-C) employee on October 31, 2014 while serving as a Social Studies Mistress in the school cadre Punjab. While stepping up the pay of the petitioner to that of her junior, by mistake she was given the higher pay with reference to a colleague who was in the Male cadre. The anomaly arose in the year 1978. At that time and till much later the seniority list of Masters and Mistresses was maintained separately under the provisions of The Punjab State Education Class III (School Cadre) Service Rules, 1978 and this position continued to be maintained till the separation was held to be unconstitutional, arbitrary and unreasonable classification on the basis of sex in **Neelam Rani v State of Punjab,** 2010 (2) RSJ 70: 2010 (1) SCT 558 [decided on January 8, 2010] and both the cadres were ordered to be merged in a common seniority list for purposes of seniority and promotions.

2. Be that as it may, in the wake of the declaration of law by the Division Bench in *Neelam Rani* the department passed the impugned order of recovery on the ground that since the cadres were different amongst men and women teachers by the rules before they were struck down, the petitioner could not claim parity with the male colleague in the year 1978 and as a result the recovery of Rs.1,82,659/- was ordered retrospectively from DCRG at the time of superannuation from service. She is faced with the financial pinch.

3. Without going into the question of law in *Neelam Rani's case* (supra), Mr. Nirmal Singh, learned counsel appearing for the petitioner submits that the recovery cannot be presently sustained even if it was a mistake in overpayment for which she practiced no deceit or fraud in view of the decision of the Supreme Court in **State of Punjab v. Rafiq Masih,** (2015) 4 SCC 334 evolving wholly fresh principles of recovery when impermissible and cannot be effected from an employee by the employer. The Supreme Court has issued salutary directions in cases of payment mistakenly made in excess of entitlement and the petitioner's case fall in directions (i), (ii) & (iii) handed down, which bar recovery in cases indicated in paragraph 18 of the judgment, which read as follows:-

> "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 hereinabove, 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 excess payment has been made for a period in excess of five years before the order of recovery is issued."

4. The Supreme Court has put a complete prohibition on recovery of excess payments for a period in excess of 5 years before the order of recovery is issued. In the present case, the excess payment, was made from 1978 onwards which has accumulated to the aforesaid amount representing the impugned recovery order. In view of this situation, the impugned order dated November 28, 2014 (P-2) is not legally sustainable and deserves to be set aside in view of the binding statement of law which has to be given effect to to save the petitioner.

5. Accordingly, the petition is allowed. The impugned order (Annexure P-2) is set aside to the extent it is adverse to the petitioner. The respondent-State is directed to refund the money to the petitioner within one month from the date of receipt of certified copy of this order. The petitioner would be entitled to 6% simple interest on the amount of recovery till realization. In case of breach of payment within the time allowed then the whole amount will be payable with 12% simple interest from the date it was deducted till payment liability is discharged.

(RAJIV NARAIN RAINA)
JUDGE

9.10.2015
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