

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 17076 of 2005 (O&M)

Date of Decision: 14.6.2016.

Parduman Singh

--Petitioner

Versus

State of Punjab and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. D.K. Bhatti, Advocate for the petitioner.

Ms. Simsi Dhir Malhotra, D.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Challenge in the instant writ petition is to the order dated 8.9.2005 (Annexure P-4), passed by the Superintending Engineer, Water Supply & Sanitation, Ludhiana vide which the last pay drawn by the petitioner has been considered as Rs.8650/-. Petitioner also impugnes the consequential letter dated 15.9.2005 (Annexure P-5) vide which he has been intimated that a recovery of Rs.72,182/- is to be effected as his pay as on 31.12.2004 has been fixed at Rs.8375/- and Rs.8650/- w.e.f. 1.1.2005. Further Writ of Mandamus is sought directing the respondent authorities to fix the pension of the petitioner on the basis of last pay drawn i.e. Rs.9200/-.

Brief facts that may be noticed are that the petitioner was appointed as a Clerk under the Water Supply & Sanitation Department, State of Punjab on 11.3.1971. Thereafter, while serving on the post of Senior Assistant petitioner sought voluntary retirement on 31.8.2005. Pleaded case of the petitioner is that the last pay drawn by him was Rs.9200/- and such amount was reflected in the pension papers that had duly been submitted. However, post retirement petitioner was served with

the impugned order dated 8.9.2005 (Annexure P-4) vide which his leave encashment for a period of 300 days was calculated on the basis of pay as Rs.8650/-. Thereafter, communication dated 15.9.2005 (Annexure P-5) was issued informing the petitioner that his pay had been fixed at Rs.8375/- as on 31.12.2004 and consequential pay was fixed at Rs.8650/- as on 1.1.2005.

Stand taken on behalf of the State is that such fixation of pay at the correct stage was made in pursuance to an objection having been raised during the course of an audit exercise.

Counsel appearing for the petitioner during the course of arguments today states that he is not pressing the petition against the exercise of the State Govt. as regards fixation of pay i.e. Rs.8375/- as on 31.12.2004 and Rs.8650/- as on 1.1.2005. Further statement has been made at the bar that the petitioner would also not be impugning the fixation of pension as per the orders dated 8.9.2005 (Annexure P-4) and 19.9.2005 (Annexure P-5). Counsel submits that he is confining the scope of the instant writ petition only against the recovery of amount of Rs.72,182/- that has now been directed.

This Court having heard counsel for the parties and having perused the pleadings on record is inclined to accept a limited prayer raised on behalf of the petitioner with regard to recovery of an amount that already stands paid to him during the course of his employment.

The Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) R.S.J., 177* had considered the issue of recovery from employees, where payments had mistakenly been made by the employer in excess of their entitlement and had culled out certain situations wherein recoveries at the hands of the employer was held

to be impermissible in law. Para 12 of the judgement in **Rafiq Masih's** case (supra) would be relevant and is reproduced hereunder:-

“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.*
- (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 recovery.”*

In the facts of the present case the petitioner sought voluntary retirement while serving on the post of Senior Assistant and such request was acceded to and he was relieved from duties on 31.8.2005. Excess payment of Rs.72,182/- on account of incorrect pay fixation had been made over to him during the course of his employment and which is now sought to be recovered post retirement. Such recovery would not be permissible in

the light of the guidelines and parameters laid down by the Hon'ble Supreme Court in ***Rafiq Masih's*** case (supra). It may be taken note of that learned State counsel under instructions from Mr. R.C. Diwan, Superintending Engineer, Water Supply & Sanitation Circle, Ludhiana and who is present in Court, states that recovery of the amount in question has till date not been effected from the petitioner.

In view of the above, the present petition is partly allowed. The action of the respondent authorities in having re-fixed the pay of the petitioner as Rs.8650/- as on 1.1.2005 and consequential fixation of pension, is upheld. It is, however, directed that the recovery of excess amount that had been made over to the petitioner during the course of his service tenure on account of an inadvertent and incorrect fixation at the higher stage shall not be effected.

Petition is disposed of accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

14.06.2016.
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Whether to be referred to Reporter? No.