

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 12087 of 2013
Date of decision : 08-03-2016

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Raj Kumar Gupta

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Balraj Gujjar, Advocate for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner is seeking writ of certiorari for quashing the letter dated 9.1.2013 (Annexure P-1), vide which the information regarding the recovery of excess payment amounting to Rs.45099 (in two installments) paid to the petitioner by way of granting the three annual increments even during suspension period, has been given.

Brief facts of the case are that the petitioner superannuated from the DRDA, Bhiwani as Assistant Project Officer, on dated 31.12.2012. It would be relevant to mention here that the petitioner remained suspended from the service w.e.f. 18.4.2010 to 30.12.2012 due to the registration of a criminal case. However, the respondent-Department granted annual increments to the petitioner for this period. When the respondent-Department came to know regarding the excess payment of arrears to the petitioner then they immediately recovered the same amount from the subsistence allowance of the petitioner without advancing any notice or providing any opportunity of hearing. They issued the impugned letter dated 9.1.2013 (Annexure P-1) intimating the petitioner regarding the recovery.

The petitioner is seeking setting aside of the above said order dated 9.1.2013 (Annexure P-1) on the ground that no notice was given to him before effecting the aforesaid recovery. The petitioner sent a legal notice dated 14.2.2013 (Annexure P-2) in this regard. Respondent no. 2 filed reply dated 12.4.2013 (Annexure P-3) to the legal notice of the petitioner. In the reply, the respondent has justified the order of recovery by mentioning that the petitioner was placed under suspension by the department w.e.f 18.4.2010 to 30.12.2010 as a criminal case bearing FIR No.58 dated 29.6.2009 U/S 420, 467, 471 IPC was registered against him. Moreover, he remained in judicial custody w.e.f 18.4.2010 to 18.5.2010 (for one month). The services of the petitioner petitioner were reinsated on

31.12.2012 on the date of his retirement. As such the petitioner remained suspended from service w.e.f 18.4.2010 to 30.12.2012. However, during the suspension period the pay of the petitioner had been fixed and the three annual increments for the suspension period had also been granted inadvertently which is not admissible according to rules and law. Resultantly the same had been recovered from the petitioner by the respondent-department accordingly. Therefore the recovery made from the petitioner was quite legal and just as the excess payment can be recovered at any time/stage

The stand taken by the respondents in the written statement is that after registration of FIR No.58 dated 29.6.2009 U/S 420, 467, 471 IPC at Police Station, Behal (Bhiwani), the petitioner was arrested by the police on 18.4.2010. However, in the above said FIR, the matter is related to embezzlement/misappropriation of Govt. money by the petitioner which is still pending in the Court of JMFC, Loharu (Bhiwani). He remained in judicial custody w.e.f 18.4.2010 to 18.5.2010 (i.e about one month). Hence, the petitioner was placed under suspension accordingly. The services of the petitioner were reinstated on 31.12.2012 i.e the date of his retirement and finally he retired from service after attaining the age of superannuation i.e 58 years. As such the petitioner remained suspended from Govt. service w.e.f 18.4.2010 to 30.12.2012. However, the suspension period (i.e 18.4.2010 to 30.12.2012) had not been decided till date as a criminal case is pending against the petitioner. The petitioner

also filed CWP No.11869 of 2011 for benefit of higher pay scale. The same was decided by this Court vide judgment dated 30.4.2012 directing the Department to pay the higher pay scale to the petitioner. Afterward the arrears of higher pay scale including subsistence allowance had been granted to the petitioner and amount of Rs.3,56,608/- had been paid to the petitioner through cheque No.059384 dated 8.8.2012. At the time of calculating the arrears of higher pay scales, it came to the notice of the respondents that three annual increments even for the suspension period had been granted inadvertently. Resultantly the excess payment amount to Rs.45099 had been paid to the petitioner which is liable to be recovered. Since the criminal trial is still pending suspension period is not to be counted as duty period. The department vide letter dated 7.12.2012 (Annexure R-3) informed the petitioner that his pay had been wrongly fixed and thus an amount of Rs.45099 has to be recovered from him in two installments i.e Rs.22500 from the month 11/2012 and Rs.22599 from 12/2012. This letter was written to the petitioner on 7.12.2012 i.e before he was reinstated on 31.12.2012. Hence the petitioner cannot seek setting aside of the recovery order on the ground that it has been passed after the date of his retirement. Moreover, as per the instruction dated 25.5.2010 (Annexure R-4) issued by Finance Commissioner-cum-Principal Secretary Finance Department, Govt. of Haryana, it is clearly mentioned that if a wrong benefit had been granted to any employee undeservedly because of bona fide mistake committed by the employer, then the same is liable

to be recovered accordingly. Therefore as per instruction dated 25.5.2010 (Annexure R-4) clerical mistakes can be rectified, at any stage and no one can take undue benefit which has been granted by way of bona fide mistake.

Counsel for the petitioner has referred to the judgment of Hon'ble the Supreme Court of India in the case of '**State of Punjab and others vs. Rafiq Masih (White Washer) and others**' to contend that no recovery can be effected from the employee after the date of retirement.

In compliance of the order dated 30.4.2012 passed by this Court in CWP No. 11869 of 2011, order dated 18.7.2012 (Annexure R-1) was passed. After perusal of the order it is clear that the benefit of three annual increments which was granted to the petitioner after 2009 was not admissible to the petitioner as he was under suspension. This order dated 18.7.2012 (Annexure R-1) was modified by office order dated 16.11.2012 (Annexure R-2). Thereafter, vide letter dated 7.12.2012 (Annexure R-3), the petitioner was informed that his pay had been wrongly fixed and after refixation of the pay, a sum of Rs.45099/- is liable to be recovered from him. This amount was going to be recovered from the salaries for the months of November 2012 and December 2012.

The judgment of Hon'ble the Supreme Court in **Rafiq Masih's case (supra)** is not applicable to the facts of the present case. A perusal of the above said three orders (Annexures R-1 to R-3) shows that before the date of retirement of the petitioner the above

said modification regarding fixation of pay has been done by the department and they are covered by the instruction dated 25.5.2010 (Annexure R-4).

Having regard to the aforesaid, the writ petition is dismissed.

08-03-2016
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(RITU BAHRI)
JUDGE