

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

**CWP-19061-2013 (O&M)
Date of decision:13.11.2017**

Harbhagwan Singh

... Petitioner

Vs.

State of Punjab & others

... Respondents

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

Present: Mr. K.K. Saini, Advocate for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

One Tara Singh, Social Studies Master under the Punjab State Education Department retired on 31.03.2006 upon attaining the age of superannuation. His retiral benefits were not released. Tara Singh accordingly was constrained to institute a civil suit in September, 2008 and which was decreed on 06.01.2012 in his favour. In spite thereof, the retiral benefits were not being released and which led to the filing of the execution application. The trial Court in addition to the admissible retiral benefits, fastened a liability of 12% interest on account of delayed release i.e. an amount of Rs.1,05,858/- upon the respondent/department. The requisite payment was made over to Tara Singh on 29.08.2012 towards satisfaction of the decree.

The instant petition has been filed impugning the Memo dated 17.04.2013 (Annexure P-1) as also Memo dated 23.04.2013 (Annexure P-2) and in terms of which 50% of the amount of Rs.1,05,858/- released in favour of Tara Singh towards interest component has been recovered from

the petitioner from his salary in three installments on the purported ground that he had been serving as Head Master/Drawing and Disbursing Officer of the school from where Tara Singh had retired.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the recovery effected from the petitioner i.e. 50% of Rs.1,05,858/- cannot sustain.

Perusal of the impugned Memo dated 17.04.2013 (Annexure P-1) would reveal that the same was issued by the District Education Officer (S.E.), Ferozepur and addressed to the Principal, Government Senior Secondary School, Mamdot and the Head Master, Government High School, Khundar Uttar on the subject of recovery of interest awarded in favour of Tara Singh in the civil proceedings. As per such Memo, it was directed that recovery of interest paid to Tara Singh i.e. Rs.1,05,858/- be effected from the '**responsible officials**' of the respective schools. In pursuance to the Memo dated 17.04.2013 (Annexure P-1), Memo dated 23.04.2013 (Annexure P-2) was issued and addressed to the present petitioner as also one Rachhpal Singh (retired S.S. Master). The Memo dated 23.04.2013 (Annexure P-2) was more in the nature of a notice/opportunity having been granted to the petitioner as also Rachhpal Singh (retired S.S. Master) as to why recovery of the amount in question be not effected. Insofar as the present petitioner is concerned, it was stated in Memo dated 23.04.2013 that Sh. Tara Singh had been posted and had retired from Government High School, Khundar Uttar and where the petitioner had served as a Head Master as also the Drawing and Disbursing Officer and accordingly, the petitioner was directed to submit his version as also to

appear for personal hearing on 03.05.2013.

Petitioner at that stage is stated to have submitted a response dated 03.05.2013 to the Principal of the School which is placed on record and appended as Annexure P-6.

Subsequently, without passing any specific order, recovery of 50% of Rs.1,05,858/- in three installments has been made from the petitioner in the year 2013 from his salary head.

Perusal of the response dated 03.05.2013 (Annexure P-6) and the contents of which are not in dispute would reveal that Tara Singh had retired from the school in question on 31.03.2006 whereas drawing and disbursing powers had been given to the petitioner subsequent in point of time i.e. on 07.07.2006. Furthermore, the petitioner had specifically asserted in the response that Tara Singh had never made any oral or written request for withdrawal of GP Fund and neither had the clerk of the school brought to his notice as regards any pending retiral dues payable to Tara Singh. Petitioner further took a specific stand that in the civil suit instituted by Tara Singh, petitioner had not been impleaded as a party defendant and nor was the school in question i.e. Government High School, Khundar Uttar made a party.

In the written statement filed on behalf of the State, the stand taken is that the department had inquired into the case and as such, the petitioner was held responsible towards 50% of the interest component that had been made over to Tara Singh. Further averments made in the written statement is that Tara Singh made several requests to the petitioner for his GP fund final payment but he was not released the same.

Since counsel representing the petitioner had contested such

stand, on the last date of hearing i.e. on 24.10.2017, learned State counsel was directed to complete instructions as to whether any exercise/inquiry for affixing responsibility for the delayed release of GP fund amount payable to Tara Singh, S.S. Master (retired) was conducted.

During the course of resumed hearing, Mr. Avinit Avasthi, learned AAG, Punjab upon instructions from Sh. Suresh Kumar, Principal, Government High School, Khundar Uttarr, District Ferozepur and who is present in Court apprises the Court that there was no inquiry conducted by the department in the matter as regards affixing of responsibility upon the erring official pertaining to delayed release of retiral payment to Tara Singh, S.S. Master (retired). State counsel would further concede that the averments made in the written statement as regards Tara Singh, S.S. Master (retired) having made several requests to the petitioner for release of his GP fund final payment are not on the basis of any material on record.

The inescapable conclusion is that the stand taken in the written statement is perverse and contrary to the record.

In the impugned Memo dated 17.04.2013 (Annexure P-1), recovery of interest that was awarded and released to Tara Singh, S.S. Master (retired) had been directed from the '**responsible officials/officers**'. It was thus imperative for the respondent/authorities to have conducted an inquiry in the matter so as to identify the '**responsible officials**.' No such inquiry concededly has been done.

The contentions and submissions raised by the petitioner in the response dated 03.05.2013 at Annexure P-6 could not have been treated as irrelevant to the issue. The same were required to be dealt with in an inquiry or at the least by passing a speaking order assigning detailed reasons. State

Government has been found completely lacking on such count.

Strangely, even though the State Government had decided to recover the balance 50% from one Rachhpal Singh (retired S.S. Master) but the uncontroverted factual premise is that no recovery from such official has been effected merely by stating in the written statement that there were '**official reasons**' for not doing so.

An action on the part of the State Government/employer having adverse financial implications on an employee cannot be taken on mere whims and fancies. In the present case, there is no basis whatsoever to justify the impugned recovery from the petitioner.

For the reasons recorded above, the present writ petition is allowed. State action as regards recovery of 50% of Rs.1,05,858/- from the salary head of the petitioner is held to be bad in law. The amount recovered is directed to be refunded to the petitioner within a period of four weeks from the date of receipt of a certified copy of this order.

Liberty, however, is granted to the State Government to proceed further, if so advised, in accordance with law.

Petition allowed in the aforesaid terms.

13.11.2017

harjeet

(TEJINDER SINGH DHINDSA)

JUDGE

(i) Whether speaking/reasoned? Yes

(ii) Whether Reportable? Yes