IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21097 of 2013
Date of Decision: 27.03.2017

Saroj Shourie **...Petitioner**

Versus

State of Punjab & Others **...Respondents**

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arihant Goyal, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

Mr. Amit Arora, Advocate
for respondent No. 3.

JAISHREE THAKUR, J. *(Oral)*

The petitioner herein challenges the impugned order dated 16.09.2011 (Annexure P-2) by which an amount of Rs. 81,770/- has been deducted from the retiral benefits given to her.

In brief, the facts are that the petitioner herein, who was working with respondents-authorities w.e.f. 25.04.1975 and was sent on deputation from Rajindra Hospital, Patiala to General Hospital, Sector 16, Chandigarh on 11.02.1981 and after rendering more than 34 years of service as Staff Nurse, retired on attaining the age of superannuation on 31.08.2009. The pension papers of the petitioner were forwarded by respondent No. 3 to respondent No. 2 and after more than two years of retirement, she was informed that she was required to deposit an amount of Rs. 81,770/- on account of payment of the pay and allowances made to her for the period w.e.f. 25.04.1993 to 31.08.2009.

Counsel for the petitioner contends that the action of the respondents-authorities in not refunding the amount of Rs. 81,770/- recovered from the retiral benefits of the petitioner despite the law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih and others, 2015 (4) SCC 334*** is neither justified and nor sustainable in the eyes of law.

Per contra, counsel for the respondents-authorities submit that on account of wrong fixation of the pay and increments, the petitioner had been paid an excess amount which was recovered.

I have heard learned counsel for the parties and have perused the record of the case.

Admittedly, the petitioner retired in 2009 on attaining the age of superannuation. It is after more than two years from the date of retirement that the petitioner was asked to deposit a sum of Rs. 81,770/- on account of excess payment made to her for the period w.e.f. 25.04.1993 to 31.08.2009. The law, in this regard, is well settled by the Hon'ble Supreme Court in the case of ***Rafiq Masih*** (supra). The question before the Apex Court was whether recoveries could be effected from an employee on account of monetary benefits given which they were not entitled to. In the case of ***Rafiq Masih*** (supra), the Apex Court 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.

(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 recover."

In the instant case, monetary benefits/increments were given to the petitioner for the years 1993 onwards. The petitioner herein had made no misrepresentation nor had played any fraud upon the Department in getting those increments. As has been held in the case of ***Rafiq Masih*** (supra), no recoveries can be made from the employees belonging to Class-III and Class-IV service or Group 'C' and Group 'D' service after retirement nor can recoveries be made from retired employees or employees who are due to retire within one year of the order of recovery. In the instant case, the recovery order is dated 16.09.2011 issued two years after the petitioner had retired and seeks to recover increments that has been given to the petitioner from 1993 onwards.

Therefore, this Court has no hesitation in holding that such recoveries would not be permissible.

In view of above, the impugned order dated 16.09.2011 is hereby set aside and the recovery of Rs. 81,770/- that has been made is held illegal and arbitrary and, therefore, not sustainable.

Accordingly, the respondents-authorities are directed that the amount so recovered be refunded to the petitioner with interest @ 6% per annum from the date of recovery, within a period of three months from the date of receipt of certified copy of this order. In case, the needful is not done within a period of three months, then the respondents-authorities shall be liable to pay the amount so recovered with interest @ 9% per annum from the date of recovery.

The instant writ petition stands allowed accordingly.

March 27, 2017 **(JAISHREE THAKUR)**
Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*