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

CWP No.14638 of 2017
Date of Decision.19.12.2017

Amrik Singh ....Petitioner

Vs

Union of India and others ....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Narinder S. Lucky, Advocate
for the petitioner.

Mr. P.C. Goyal, Advocate
for respondent Nos.1 and 3.

Ms. Ekta Sharma, Advocate for
Mr. D.R. Sharma, Advocate
for respondent Nos.2 and 4.

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AMIT RAWAL J.(ORAL)

The petitioner has knocked the door of this Court by invoking writ jurisdiction under Articles 226 and 227 of the Constitution of India, challenging the order dated 25.05.2016 (P-1) passed by the Central Administrative Tribunal, Chandigarh (hereinafter called as "CAT") whereby the order dated 02.07.2015 ordering recovery of ₹4,76,137/- from the pension of the petitioner, had been affirmed.

Mr. Narinder S. Lucky, learned counsel appearing on behalf of the petitioner submitted that the petitioner joined the services of the respondent-Department as Telephone Operator on 4.6.1967 and superannuated on 28.2.2007 as AGM from the office of respondent No.4-Chief General Manager Telecom, Punjab Circle, Sector 34-A, Chandigarh.

At the time of retirement neither any charge sheet nor any show cause notice or departmental enquiry was pending against him. The petitioner after retirement was receiving a sum of ₹45,273/- as pension every month but all of a sudden was shocked and surprised to receive a letter dated 20.08.2015 from the Punjab National Bank, Sector 22 Branch, Chandigarh for recovery of an amount of ₹4,76,137/-. The petitioner also received a communication from the office of respondent No.3-Controller of Communication Accounts Punjab Telecom Circle regarding recovery in lieu of excess payment of Dearness Allowance (D.A.). No show cause notice regarding excess payment of D.A. w.e.f. 1.1.2007 or intimation was ever received. The petitioner approached the office of respondent No.3 about the aforementioned recovery and acquired knowledge that the order of recovery had been issued on the basis of excess payment of D.A. It is in this backdrop of the matter, the petitioner approached the CAT for vindication of his grievance. However, the CAT has erroneously dismissed the petition without noticing the law laid down by the Apex Court in ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. 2015(4) SCC 334*** wherein recovery made from the employees belonging to Class III and Class IV Service (or Group 'C' and Group 'D' Service) and from retired employees, or employees who are due to retire within one year of the order of recovery, on account of payment mistakenly made in excess of their entitlement, had been held to be impermissible. The recovery from the petitioner was sought to be made after 8 years of retirement without compliance of principles of natural justice.

Per contra, Mr. P.C. Goyal, learned counsel appearing on behalf of respondent Nos.1 and 3 and Mrs. Ekta Sharma representing Mr. D.R. Sharma, learned counsel appearing for respondents No.2 & 4 submitted that recovery had been caused by the Manager of the Punjab National Bank and on account of non-impleadment of the Punjab National Bank, the writ petition was not maintainable. The order of recovery from the pension was passed by the Manager, Punjab National Bank on 20.08.2015. The recovery is related to over-payments made by the Bank to the pensioner on account of incorrect application of Dearness Allowance by the bank from 1.1.2007 to 30.6.2015. The said over-payment was detected during the audit of the pension account of the petitioner. Clause 7.2 of the MOU provided that the Bank shall ensure that no excess reimbursement is claimed or made against the consolidated account of a territorial CCA. The basic pension of the petitioner w.e.f. 1.1.2007 was fixed at ₹18,255/- which was commuted to ₹7,302/- and residuary pension was determined as ₹10,953/-. The rate of DA, as on 1.1.2007, was 0% whereas the Bank had given DA w.e.f. 1.1.2007 @ 188%. Therefore, the petitioner was drawing pension @ ₹45,273/- instead of ₹10,953/-. Prayer was made before this Court to dismiss the writ petition by upholding the order under challenge.

We have heard learned counsel for the parties and appraised the paper book. The question with regard to recovery of the amount paid in excess of entitlement to the employees belonging to Class III and Class IV or retired employees or employees due to retire within one year had been pondered upon by the Supreme Court in the case of ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.*** (supra). The relevant paragraphs 8 and 12 of the same are reproduced as under:-

> *"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the*

employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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."

Concededly, the petitioner in the present case had retired w.e.f. 01.01.2007 and the order of recovery was passed after 8 years without affording any opportunity of hearing. It is not the case of the respondent Department that the petitioner at any point of time mis-represented to it for claiming the excess dearness allowance. It was calculation done at the end of the Bank and not for any fault of the petitioner. In view of the ratio decidendi culled out in ***Rafiq Masih's case*** (supra), alleged recovery from the pension of the petitioner could not have been legally made. The CAT has failed to appreciate the legal position in its correct perspective.

In view of the above, the order dated 20.08.2015 along with consequential order dated 02.07.2015 and the impugned order dated 25.05.2016 passed by the CAT are set aside. Resultantly, the writ petition stands allowed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

December 19, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable Yes