

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

CWP No. 23308 of 2016 (O&M)

Date of Decision: 19.04.2017

RAJINDER SINGH

... Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Pritam Singh Saini, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Addl. A.G., Punjab.

KULDIP SINGH, J. (Oral)

The petitioner, who retired as Technician Grade-III (Binder) from the respondent-department on 31.05.2016, has preferred this writ petition under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of writ of certiorari for quashing the orders dated 29.06.2015, 27.05.2016 and 14.06.2016 (*Annexure P-1 to P-3*) vide which recovery of ₹1,14,225/- has been made from the pensionary benefits/gratuity of the petitioner. The prayer has also been made for issuance of writ in the nature of mandamus for directing respondents to refund the amount of ₹1,14,225/- alongwith interest, which has been deducted from the retiral benefits of the petitioner.

I have heard the learned counsel for both the parties and have carefully gone through the case file.

Suffice to say that the petitioner retired from service on 31.05.2016. The perusal of the orders dated 29.06.2015, 27.05.2016 and 14.06.2016 (*Annexure P-1 to P-3*) shows that on account of wrong refixation of pay, the said recovery has been made.

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The State on the other hand, has taken the stand that recovery has been made on account of excess payment with regard to the wrong fixation of pay. The State has relied upon an undertaking (*Annexure R-7*) given by the petitioner.

It comes out that on account of alleged wrong fixation of pay, the said recovery has been effected at the time of retirement of the petitioner. In this case, the petitioner had addressed one letter dated 27.05.2016 to the Assistant Controller, Government Press, Patiala, vide which he requested that a sum of ₹ 114,225/- shown in the letter under reference No. 280 dated 27.05.2016 may be withheld from his gratuity on temporary basis and his pension case may be sent to the Accountant General, Punjab as soon as possible.

However, the petitioner is also given another undertaking (*Annexure R-7*) which is reproduced as under: -

“I Rajinder Singh, Binder, (Binding-3, token No. 444) Government Press, Patiala give my undertaking that my pay is due for re-fixation from dated 01.01.1986 according to letter No. 4/118/09-IFPPC/624, Chandigarh dated 25.05.2011 of Punjab Government Finance Department (Pension Policy and Coordination Branch).

If in future anytime re-fixation of my pay bound wrong according to Government Instructions/ Correction in instructions/or any Constitutional reason then I will be bound to get adjust the excess amount from my Pay/Pension.

*Sd/- (Rajinder Singh)
Name : Rajinder Singh
Post :
P.P.O No. and Bank Account No.
(If Pensioner)”*

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The perusal of the undertaking shows that the pay of the petitioner was to be re-fixed and he had given undertaking that in case an excess amount is found to be paid, he will be liable to pay the same.

The pleadings of the petitioner show that the said undertaking has not been challenged by the petitioner stating that this was obtained under coercion before or at the time of retirement of the petitioner. Once the undertaking has not been challenged, it is assumed that the petitioner has given his free consent. Therefore, it was in pursuance of the said undertaking the recovery has been effected therefore, the authority of ***State of Punjab Vs. Rafiq Masih (Supra)*** is not applicable in the present case.

It being so, there is no illegality and infirmity in the impugned orders dated 29.06.2015, 27.05.2016 and 14.06.2016 (*Annexure P-1 to P-3*). Consequently, the present petition stands dismissed being devoid of merits.

April 19, 2017

Suresh Kumar

**(KULDIP SINGH)
JUDGE**

Whether speaking / reasoned :

✓
Yes / No

Whether Reportable :

✓
Yes / No