IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 7466 of 2016
DECIDED ON: SEPTEMBER 25, 2017

DR. ASHOK KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB & ANR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Mohan Singla, Advocate
for the petitioner.

Ms. Akanksha, AAG, Punjab.

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JASPAL SINGH, J

Through the instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought a writ in the nature of certiorari seeking quashing of impugned order dated January 30, 2014 (P-2) whereby, recovery to the tune of ₹4,79,319/- was ordered, out of which an amount of ₹3,75,745/- has already been recovered from his pay i.e. at the fag end of his service and an amount of ₹1,03,574/- was got deposited from him WITH FURTHER prayer for the issuance of a writ in the nature of mandamus directing the respondents to refund the afore-said amount along-with interest @ 18% per annum.

2. Concededly, petitioner stood retired on March 31, 2014 as Professor from Government Medical College, Patiala. Vide impugned order dated January 30, 2014 approximately two months prior to the date of retirement of petitioner, recovery to the tune of ₹4,79,319/- was ordered to be affected, out of which an amount of ₹3,75,745/- has already been recovered from his pay whereas, the remaining amount of ₹1,03,574/- was got deposited by the petitioner under pressure or coercion. Petitioner made representations to the respondents for effecting illegal recovery of ₹4,79,319/- from his retiral dues but no action was taken, which necessitated the filing of instant petition.

3. The main grouse raised by learned counsel for the petitioner is that even if for the sake of arguments, it is admitted that an amount of ₹4,79,319/- is outstanding against the petitioner, which can be said to have been mistakenly paid by the respondents in excess of his entitlement even then the respondents cannot recover the said amount and are obliged to re-pay the same along-with interest in view of lad laid down by Hon'ble Apex Court in the case of ***State of Punjab v. Rafiq Masih;*** ***2015 (4) SCC 334,*** wherein, it was observed in para 12 (ii) of the judgment that no recovery can be made from retired employees as follows:

> *"(ii) Recovery from retired employees, or employees who are due to retire within in one year, of the order of recovery."*

4. While concluding his arguments, learned counsel for the petitioner has submitted that since the amount has been illegally recovered from the retiral dues of the petitioner and some amount was deposited by the petitioner under pressure or coercion, respondents are bound to refund the same that too, along-

with interest for the period it was utilized by them.

5. On the other hand learned State counsel has submitted that Rafiq Masih's case (supra) relied upon by learned counsel for the petitioner is not applicable in the facts and circumstances of the case in hand for the simple reason that it only applies to the employees or retirees belonging to Class-III or IV categories and not to the Gazetted Officers i.e. Class-I and II categories. Otherwise also amount has already been recovered admitting his liability. Thus, there is no question of refund or grant of interest thereon.

6. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and have minutely gone through the record as well as judgment relied upon by learned counsel for the petitioner but finds that various contentions put forth by learned counsel for the petitioner are devoid of merits.

7. Undisputably, petitioner stood retired as Professor, which is a class-II Gazetted post and a glance at the various observations made in Rafiq Masih's case (supra) makes it crystal clear that it is only applicable to the employees/retirees who belongs to Class-III or IV categories and not to the officers/officials of Class-I or II categories. Moreover, the said benefit has been given to Class-III and IF employees considering the fact that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer and further that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger and his earnings would substantially be reduced on his retirement.

These aspects were earlier considered by Hon'ble Apex Court in the case of ***Syed Abdul Qadir v. State of Bihar;* 2009 (3) SCC 475.** Thus, Rafiq Masih's case (supra) is not applicable and distinguishable from the facts and circumstances of the case in hand.

8. As an upshot of afore-said discussions, this Court does not find any merit in the instant petition. Accordingly, it stands dismissed but no order as to costs.

SEPTEMBER 25, 2017 **(JASPAL SINGH)**
sham **JUDGE**

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