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

**CWP-15492-2015**

**Date of Decision : November 21 , 2018**

Malkit Singh Sran

.... Petitioner.

Versus

State of Punjab and others.

.... Respondents.

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present Mr. Amrik Singh, Advocate  
for the petitioner.

Mr. Balbir Singh Sewak, Addl. A.G., Punjab  
for the respondents.

**SHEKHER DHAWAN, J.**

Present writ petition under Articles 226/227 of the Constitution of India is for quashing of letter dated 31.10.2014 (Annexure P/1), order dated 16.1.2015 (Annexure P/3) and the recovery statement dated 29.05.2015 (Annexure P/3) issued by the respondents, whereby the pay and consequently pension of the petitioner has been refixed and recovery has been effected from the arrears of the petitioner after his retirement after withdrawing the benefit of 24 years proficiency step up granted to the petitioner on 29.06.2003 while he was in service.

2. As per the petitioner, he had joined as Junior Engineer on 19.3.1979 and was promoted as S.D.O. On 27.9.2012. He retired as such

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on superannuation on 31.3.2014. The pay of the petitioner was refixed after withdrawing the benefit of 24 years ACP and the pension case was submitted on 16.1.2015 as per Annexure P/2. Respondent No. 4 re-fixed the pay of the petitioner vide letter dated 09.04.2015. As per the petitioner, the said orders have been passed in violation of provisions of the Constitution and the law laid-down by this Court and Hon`ble Apex Court and it has been prayed that the same be quashed.

3. In the reply having been filed by the respondents, plea was taken that the pension papers were processed by the Accountant General, Punjab and pension of the petitioner was accordingly released. The re-fixation of the pay of the petitioner is as per the Government instructions and directions (Annexure R/1) of Accountant General, Punjab. Plea was also taken that the petitioner has not availed the remedy of appeal and has approached this Court.

4. As per the reply filed by way of short affidavit on behalf of Principal Accountant General (A&E) Punjab (respondent No.4), the office of answering respondent only authorizes pension, gratuity and commutation of pension to the retired employees of Punjab State on receipt of complete cases alongwith sanction from Pension Sanctioning Authority. The department of the petitioner i.e., respondent No. 3 was merely asked vide letter dated 31.10.2014 to correct the pay of the petitioner as the proficiency step up allowed to him after 24 years of service was not in order in terms of Punjab Government letter dated 3.6.2005 and the office finalized the same by issuing necessary authorities

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on 9.4.2015. The answering respondent had never asked the department of the petitioner to effect recovery on account of re-fixation of pay due to withdrawal of proficiency step up allowed after 24 years of service to the petitioner.

5. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the petitioner was granted benefit of proficiency step up on 29.06.2003 and the same has been ordered to be recovered on the basis of impugned orders, Annexures P/1, P/2 and P/3 and the same have been passed after the retirement of the petitioner. The petitioner has already drawn the said amount and as per the case of the petitioner, there was no fraud or mis-representation on the part of the petitioner while fixation of his pay in June, 2013.

6. In **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177**, while dealing with the issue of recovery, Hon`ble Apex Court summarized the following few situations, wherein recoveries by the employers, would be impermissible in law:-

- “(i).   xx    xx               xx               xx               xx
- (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 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.

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- (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."

7. More so, Hon`ble Apex Court in **Bhakra Beas Management Board Vs. Krishan Kumar Vij & Anr. 2010 AIR (SC) 3342**, observed as under:-

"40 . It is not in dispute that all the respondents of various appeals have since demitted the office on attaining the age of superannuation. While they were in service, may be on account of orders of the High Court, to save itself from being hauled up for committing contempt of court, Board has made payments to them towards arrears etc. After such a long lapse of time, more so, when the respondents have already retired, it will be harsh on our part to direct recovery thereof. Thus, we direct that the amounts already paid to the respondents would not be recovered by the Board."

8. In view of the above, the present writ petition is accepted and the impugned letter dated 31.10.2014 (Annexure P/1), order dated 16.1.2015 (Annexure P/2) and the recovery statement dated 29.05.2015 (Annexure P/3) issued by the respondents, whereby the pay and consequently pension of the petitioner has been refixed and recovery has been effected from the arrears of the petitioner after his retirement after withdrawing the benefit of 24 years proficiency step up granted to the petitioner on 29.06.2003 while he was in service are quashed and the respondents are directed to refund the recovered amount to the petitioner alongwith interest @ 9% per annum from the due date till its realization. Let

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the needful be done within three months from the date of receipt of copy of this order.

9. The writ petition stands allowed in the above terms.

**(SHEKHER DHAWAN)**  
**JUDGE**

**November 21, 2018.**  
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| Whether speaking/reasoned? | : | Yes |
| Whether reportable?        | : | Yes |

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