

In the High Court of Punjab and Haryana at Chandigarh

CWP No.13221 of 2018

Date of decision: November 22, 2018

Daljeet Kaur Arshi

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sukhdeep Singh Bhinder, Advocate for the petitioner.
Mr. Mehardeep Singh, Additional Advocate General,
Punjab.
Mr. Vikas Chatrath, Advocate for respondent No.7.
None for respondent No.8.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the petitioner is challenging the recovery, which is being made on the ground that the pay of the petitioner has been refixed with retrospective effect after her retirement.

As per the facts mentioned in the writ petition, the petitioner was appointed as a Teacher in the department of Education, Punjab on 10.03.1976. Initially, the petitioner was working on adhoc basis thereafter her services were regularised on 31.03.1977. The petitioner kept on working as such till she attained the age of superannuation on 30.04.2013. After the retirement, the pension of the petitioner was fixed by the respondents. At the time

of retirement, the petitioner was paid pension @ ₹15,050/- per month.

In the year 2018, to be precise on 29.01.2018, the pay of the petitioner was revised and the pension of the petitioner was also revised. The pension of the petitioner was revised from ₹15,050/- to ₹11,575/- w.e.f. 01.05.2013 and the respondents sought to recover excess amount. In this regard, the order was passed on 29.01.2018.

In pursuance to the order Annexure P-5 dated 29.01.2018, the respondents-bank issued a notice to the petitioner for depositing of excess amount of ₹4,51,498/-. The said notice was issued on 05.04.2018. The said amount was deducted by the respondents from the account of the petitioner. This deduction is under challenge.

Replies have been filed wherein the respondents have stated that the pay of the petitioner was revised retrospectively. Pay of the petitioner at the time of retirement was ₹30,100/-, which was revised as ₹23,150/- and, therefore, in view of the revised pay of the petitioner, the petitioner became entitled for a pension of ₹11,575/- instead of ₹15,050/-, which was being paid to her and, therefore, the petitioner was liable to deposit the excess amount received by her. There is nothing in the reply to state that there was any misrepresentation on the part of the petitioner. Petitioner had already retired on the said date when the recovery was sought to be made.

I have heard learned counsel for the parties.

It is clear that there is no misrepresentation on the part of the petitioner to claim a higher pay scale. It is only due to refixation

the salary of the petitioner with retrospective effect recovery was sought to be done. The paying of the excess pay to the petitioner was only on account of fixation done by the respondents. The petitioner had no role to play in the fixation of her salary. Further, once the petitioner has already retired from service, after a period of five years, the recovery could not have been made.

Hon'ble Supreme Court in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**, 2015(4) SCC 334 has clearly stated as to under what circumstances, the recovery cannot be made from the employees. The said paragraph is 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."

The case of the petitioner is squarely covered by situation No.(ii) enumerated by the Hon'ble Supreme Court in the above reproduced paragraph. Therefore, recovery which was made from the petitioner is contrary to the law and the order of recovery is set aside. Whatever the amount has been recovered from the petitioner i.e. ₹4,51,498/-, the same should be refunded within a period of one month from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the same terms.

(HARSIMRAN SINGH SETHI)
JUDGE

November 22, 2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No