

In the High Court of Punjab and Haryana at Chandigarh

CWP No.19440 of 2016 (O&M)

Date of decision: November 26, 2018

Krishna

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.S. Khehar, Advocate for the petitioner.

Mr. Ayush Sarna, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the petitioner is challenging the recovery amounting to ₹1,76,832/- which has been made vide order dated 12.08.2016. Further, a prayer has been made for the release of the death cum retirement gratuity, which the petitioner is entitled for on account of services rendered by her late husband along with interest @ 12% per annum.

It has been admitted by the counsel for the parties that during the pendency of the writ petition, the amount so recovered has already been refunded back to the petitioner. Further, it is settled proposition of law that no recovery could have been ordered from a retiree in view of the law laid down by the Hon'ble Supreme

(White Washer) etc., 2015(1) SCC 334. Relevant paragraph of the judgment 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 the judgment. Hence, no recovery could have been ordered from the petitioner after the retirement of her husband. Therefore, the impugned order of recovery dated 12.08.2016 is set aside.

The next prayer of the petitioner is for the grant of interest on the delayed payments. Counsel for the petitioner very fairly states that he may be allowed to make the representation for

the grant of interest for the delayed payments as the petitioner retired in November, 2015 and payments were made to the petitioner on 15.06.2017 after the delay of 19 months.

Let the petitioner make a representation within a period of four weeks from today to the respondents claiming the interest on the delayed payments. In case any representation is filed, the respondents are directed to decide the same within a period of three months by passing a speaking order and in case after the order, the petitioner is found entitled for interest/monetary benefits, the same shall also be released within a period of two months thereafter.

The writ petition stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

November 26, 2018

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