IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.17862 of 2018 (O & M)
Date of Decision: *July 30, 2018*

Mahender Singh Dalal

..... PETITIONER

VERSUS

State of Haryana & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Manoj Chahal, Advocate, for the petitioner.

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Jaspal Singh, J

Through the instant petition, preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of mandamus, directing the respondents to release the recovered amount of ₹ 1,25,780/- alongwith interest @ 18% from the date of recovery till final payment being recovered illegally and arbitrarily despite specific order dated August 19, 2016 (Annexure P-6) to the effect that no recovery can be made from the petitioner in the light of Government Instructions issued in compliance of judgment rendered by the Hon'ble Supreme Court in **State of Punjab & others vs. Rafiq Masih, 2015(4) SCC 334**.

The case set up by the petitioner is that he was appointed as Junior Engineer on January 25, 1979. His services were regularised on December 24, 1981. He was promoted to the post of SDO on December 01, 2015 and retired as such on November 30, 2016 on attaining the age of superannuation. In the interregnum, pay of petitioner was refixed w.e.f. January 01, 1986 in the scale of 1640-2900 vide order dated August 05, 2015 reducing the same by changing the date of increment from July 01, 1986 to January 01, 1987. Consequently, an amount of ₹ 1,25,780/- was recovered from his salary.

Learned counsel for the petitioner has vehemently argued that recovery has been effected in an illegal and arbitrary manner. No opportunity of hearing was afforded to the petitioner. Further, action of the respondents is contrary to the Government Instructions dated February 23, 2006 as well as law laid down by the Hon'ble Apex Court in **Rafiq Masih's case (supra)**. As such, petitioner is entitled to refund of recovered amount alongwith interest @ 18% per annum from the date of recovery till actual payment and instant petition deserves to be accepted.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner and gone through the record available but does not find any legal weight therein.

The petitioner alleged that his pay was refixed w.e.f. January 01, 1986 in the modified scale of ₹ 1640-2900 vide order dated

August 05, 2015, due to which, his date of increment was changed from July 01, 1986 to January 01, 1987, and respondent authorities passed an order recovering excess amount of ₹ 1,25,780/- from his pay whereas he did not played any fraud or misrepresentation at the time of refixation of his pay w.e.f. January 01, 1986. Moreover, respondents could not deduct the amount paid in excess without affording him any opportunity of hearing in view of various pronouncements of Hon'ble Apex Court as well as this Court.

It is not the case of respondents that petitioner played any fraud or misrepresented the authorities in getting his pay refixed. The view of the Hon'ble Apex Court in case **Syed Abdul Qadir & others vs. State of Bihar & others, 2009(1) Service Cases Today 611** as well as in ***Chandi Prasad Uniyal vs. State of Uttrakhand & others, 2012 (8) SCC 417***, was that where there is excess payment made and the error, if detected within a short period of time, recovery was permissible and the same could be done in easy installments. The view was further crystalized in **State of Punjab & others vs. Rafiq Masih (White Washer) & others, 2015 AIR (SC) 696** and the judgments rendered cases of **Syed Abdul Qadir (supra)** and **Chandi Prasad Uniyal (supra)** were all subject matter of consideration. Resultantly, Class III and IV or Group 'C' and 'D' service employees were protected from the recoveries made apart from the retired employees or who were due to retire within one year. Similarly, where excess payment had been made in excess of five years before the order of recovery was issued and where the recovery would be harsh or arbitrary and iniquitous, the employees were to be protected. The relevant observations in ***Rafiq Masih's case (supra)*** read thus:-

> "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:
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> (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."

Undisputably, petitioner stood retired as SDO, which is a Class I 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 IV 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.

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.

(Jaspal Singh)
Judge

July 30, 2018
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No