IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-29753-2017
Date of decision: - 03.12.2018

Prem Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Kamaldeep Kaur, Advocate, (Legal Aid Counsel), for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

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HARSIMRAN SINGH SETHI, J. (ORAL)

Written statement has been filed on behalf of respondents No.1 to 3 today in the Court and the same is taken on record. A copy thereof has been given to counsel for the petitioner.

In the present case, the challenge is to the order of recovery, which is being done from the petitioner after his retirement.

Petitioner, who was working as Vaccinator, retired on 30.04.2004. Despite the fact that the petitioner was entitled for the pensionary benefits, the same were not paid to him and the petitioner seeking the retiral benefits, filed a civil suit. The said civil suit was decreed in favour of the petitioner and he was held entitled for the pensionary benefits. It is an admitted fact that no appeal was filed against the decree of the civil Court dated 07.06.2011.

After the decision in the civil suit, the petitioner was paid the pensionary benefits. The pensionary benefits were calculated by the respondents on their own and were paid to the petitioner.

In July, 2016, the petitioner came to know that the respondents have started making a deduction of ₹2,500/- per month as recovery from his pension and that too without disclosing as to how and on what account, the same was being done. Prior to making of such deduction, no show-cause notice whatsoever was given to the petitioner and unilaterally, a recovery from the pension of the petitioner was started. Petitioner has served a legal notice upon the respondents and the said legal notice was replied by the respondents, vide reply dated 15.12.2016 (Annexure P-2). In reply to the said legal notice, it was mentioned that while fixing the retiral benefits of the petitioner, certain discrepancies had occurred. The said discrepancies were noticed by the Audit department in April, 2013 and in order to cure those discrepancies, the pension of the petitioner was re-fixed and after refixation of the pension and other benefits, the department came to conclusion to make recovery of ₹51,863/-. The said amount of ₹51,863/- was calculated on account of excess payment made of the commuted value of pension, excess payment of leave encashment, excess payment of pension etc. The said reply to the legal notice was challenged by the petitioner in the present writ petition.

Notice of motion was issued on 22.12.2017 and the recovery was stayed by this Court.

In reply filed to the present petition, the respondents have stated that in compliance of the order passed by the Civil Court dated 07.06.2011, the petitioner was paid the pensionary benefits after calculating the same. After the amount was paid to the petitioner, during the audit, it was found that the pensionary benefits of the petitioner were wrongly calculated and the payments were made at an enhanced rate than for which the petitioner was entitled for and as per the audit report, a sum of ₹51,863/- was to be recovered, as an excess payment was made to the petitioner.

I have heard the learned counsel for the parties and have gone through the record.

It is an admitted case that the payments were made to the petitioner on the basis of order passed by the Civil Court. All the calculations were done by the respondents themselves and the petitioner cannot be blamed for any incorrect calculation which the department has done while implementing the directions given by the civil Court in its judgment/decree dated 07.06.2011. The petitioner had already retired from service in the year 2004 and he had to fight to seek his pensionary benefits, which the department granted after a period of eight years of his retirement and that too on the basis of a judgment given by the competent court of law.

It is further admitted by the respondents that before implementing any objection given by the audit, no show-cause notice whatsoever was given to the petitioner and straightway an order was passed holding the petitioner liable for recovery of the amount. Order dated 24.02.2016 (Annexure R-3/5) was passed for depositing the excess amount and it is not a show cause notice given as to why the recovery should not be done. It is a settled principle of law that no order of recovery can be passed without observing the rules of natural justice. The present recovery has been done without following due procedure of law and hence, cannot be sustained in the eyes of law.

Not only this, a recovery from a Class III and Class IV employees cannot be done in view of the law laid down by the Hon'ble Supreme Court in **State of Punjab and others** **Vs**. **Rafiq Masih**, **2015(4) SCC 334**.

It is admitted by the respondents that the petitioner never manipulated or mis-represented in any manner to get an amount more than what he was entitled for. It was only the respondents who fixed the pensionary benefits after making calculations at their own. If any discrepancy was found by the Audit, the same was due to the mistake of the department, which cannot be attributed to the petitioner and therefore, the recovery in any case could not have been done from the petitioner as per the settled preposition of law.

Therefore, the recovery of an amount of ₹51,863/- is liable to be set aside and the same is ordered.

In case the amount has already been recovered from the petitioner, the same shall be refunded back immediately alongwith interest @ 6% per annum. Let the amount along with interest be refunded within a period of three months from the date of receipt of certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

December 03, 2018
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? No