

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.8942 OF 2018

ORDER:

Heard Sri D.Balakishan Rao, learned counsel for the petitioner and the learned Standing counsel for respondents. With the consent of counsel on either side, this writ petition is disposed of, at the admission stage.

This writ petition is filed seeking the following relief :-

“.....Writ of Mandamus declaring the impugned ante-dated D.O.No.1610/2017, Proc.No.160/ES/Fix/Cyb/2017, dated 30.8.2017 (signed on 12.10.2017) issued by the 2nd respondent as being illegal, arbitrary, void, without jurisdiction and subversive of Articles 14, 16 and 21 of the Constitution of India besides being opposed to all principles of equity, justice and fair play and consequently set- aside the same and hold that the petitioner is entitled for fixation of pension and other retirement benefits based on the last pay drawn by him with all attendant benefits including releasing the withheld amount of Rs.5,04,553.00 to applicant and pass such other order.....”

It has been contended by the petitioner that he has retired from service on 31.08.2017 as Sub Inspector of Police. The grievance of the petitioner is that the 2nd respondent vide impugned proceedings dated 30.08.2017 signed on 12.10.2017 rectifying and reducing his pay to that of Rs.49,870/- on the ground that his pay was erroneously fixed and basing on the said proceedings, the respondents have recovered an amount of Rs.5,04,553/- from him.

Learned counsel for the petitioner contends that proceedings issued by the respondents are contrary to the law laid down by the Hon'ble Supreme Court in ***State of Punjab And Others***

versus Rafiq Masih (White Washer) And Others¹. He further contends that the Hon'ble Supreme Court has summarised certain situations in paragraph 18 of the above said judgment, wherein it specifically stated that recovering the amounts from an employee by the employer would be impermissible in law under the circumstances mentioned therein. Therefore, he contends that impugned proceedings are liable to be set aside in terms of the law laid down by the Hon'ble Supreme Court stated supra.

Learned Government Pleader appearing for the respondents had contended that the impugned proceedings are issued one day before the retirement of petitioner and thus, the respondents have a right to rectify the mistake. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions of the learned counsel appearing for the respective parties, is of the considered view that as per the law laid down by the Hon'ble Supreme Court in the judgment cited stated supra, an employer is not entitled to recover the amounts from an employee either after retirement or one year prior to his/her retirement. Admittedly in the instant case, the impugned proceedings were signed on 12.10.2017 which disclose that respondents have issued impugned proceedings after retirement of the petitioner and have also withheld Rs.5,04,553/- from the retirement benefits of the petitioner which is an arbitrary exercise.

In view of the above observations, this writ petition is allowed and the impugned proceedings dated 30.08.2017 are set

¹ (2015) 4 SCC 334

aside and the respondents are directed to refund the amounts withheld from the retirement benefits of the petitioner. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 24-12-2019
dv

