IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11893 of 2016
Date of decision: 11.12.2019

Rupinder Singh .... Petitioner

versus

Punjab Water Resources Management and Development Corporation Limited and another
.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.S. Walia, Advocate
for the petitioner.

Mr. Ankit Midha, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J.

The grievance which is being raised by the petitioner in the present writ petition is that upon refixation of his salary unilaterally by the respondents after his retirement recovery of sum of Rs,1,71,669/- has been effected on the ground that excess amount was paid to him by wrongly refixing his salary in February, 1986.

The facts as mentioned in the writ petition are that the petitioner joined the service of the respondents on 08.02.1980 and he continued working with the respondents-Corporation till he attained the age of superannuation on 31.7.2015. At the time of the retirement of the petitioner, he was working as Zilledar. After the retirement, when the case of the petitioner was sent for computing the pensionary benefits, respondents refixed his salary by realising that in the year 1986, pay of the petitioner was wrongly fixed as Rs.880/- instead of Rs.850/- and, therefore, from 1986 till 2015, an excess amount of Rs.1,71,669/- has been paid to the petitioner, which amount was deducted from his leave encashment vide order dated 14.01.2016 (Annexure P/2). The said order is under challenge in the present writ petition,

Upon notice of motion, respondents have filed reply, in which it has been stated that pay of the petitioner was wrongly fixed in February, 1986 due to which, petitioner was paid excess amount of Rs.1,71,669/- and being public money, the same was recovered after rectifying the mistake, which had occurred in the year 1986 while fixing his salary.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The above stated facts are not in dispute. Petitioner has not challenged the refixation of his salary as done by the respondents vide order dated 04.12.2015. The only challenge herein is to recovery of excess amount, which has been found to be paid to the petitioner due to wrong fixation of his salary in February, 1986.

The question of law as to under what circumstances recovery cannot be effected from an employee, has been settled by Hon'ble Supreme Court of India in ***State of Punjab & Others vs Rafiq Masih (White Washer) etc (2014) 8 SCC 883.*** In para-12 of the said judgement, certain categories of employees have been laid down from whom recovery is impermissible. Relevant paragraph of the judgment is as under:-

> "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.

A bare perusal of the above would show that as per the Clause (i), no recovery can be done from the employees who are working on Group-C or Group-D posts. As per clause (ii), no recovery can be effected from retired employees or who are due to retire within one year. As per Clause (iii) if any order which has been passed beyond the period of five years of retirement and withdrawal of the same results in recovery, the same is not permissible.

The case of the petitioner is squarely covered by Clause (ii) and (iii) of the judgement in Rafiq Masih's case (supra), as the pay of the petitioner was refixed in December, 2015 which is after retirement and recovery was done in January, 2016 which is also after retirement and, therefore, impermissible as per clause (ii) of the judgement in Rafiq Masih's case (supra). Even otherwise, the respondents have withdrawn the order by which the pay of the petitioner was refixed in February, 1986 in December 2015 i.e. after a period of 35 years and, therefore, claim of the petitioner will also be covered under Clause (iii) of the judgement in **Rafiq Masih's case (supra).**

Learned counsel for the respondents very fairly concedes that the facts and circumstances of the present case are covered by the judgement in **Rafiq Masih's case (supra)** under which the recovery of the excess amount is not permissible from a retired employee.

Keeping in view the above, order dated 14.1.2016 (Annexure P/2) is set aside.

Learned counsel for the petitioner further argues that on attaining the age of superannuation, the petitioner had retired on 31.7.2015, whereas his pensionary benefits i.e. amount of gratuity was released on 17.11.2015 and amount of leave encashment was released on 24.2.2016, therefore, there is a delay in the release of pensionary benefits of the petitioner, for which the petitioner needs to be compensated by grant of interest.

Learned counsel for the respondents has not been able to point out any impediment in the release of pensionary benefits to the petitioner. Once there was no impediment in the release of pensionary benefits, it was incumbent upon the respondents to release the same within a reasonable time after the retirement.

A Full Bench of this Court in ***A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468*** has held that an employee will be entitled for release of his pensionary benefits within a reasonable time after his retirement and the reasonable time as per the Full Bench is two months and in case of failure to do the same, the employee needs to be compensated by way of grant of interest. Relevant paragraph of the judgement is as under:-

> "Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months front the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."

Further, a Co-ordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana 2014 (13) RCR (Civil) 355*** has held that where an amount is retained and used by the respondents/employer, an employee will be entitled for interest on the same. Relevant paragraph of the judgment is as under:-

> "The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was

being used by it."

Keeping in view the above, the respondents are directed to refund the amount recovered from the petitioner i.e. Rs,1,71,669/- and to grant interest on the delayed release of payment of gratuity and leave encashment @ 9% per annum from the date it became due till the same was actually released to him.

Let the release of the amount of Rs.1,71,669/- as well as computation of the interest, for which the petitioner is entitled as per this order be carried out within a period of two months from the date of receipt of copy of this order and the payment so calculated be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

11.12.2019
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No