

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-17877-2015

Date of decision: - 29.01.2019

Neel Kumar

....Petitioner

Versus

**Punjab Water Resources Management & Development Corporation
Limited through its Managing Director**

.....Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Aman Sharma, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 21.02.2013 (Annexure P-2) and order dated 31.05.2013 (Annexure P-3), by which the salary of the petitioner has been refixed and an order was passed that the amount paid in excess, should be recovered.

Before the start of the arguments, counsel for the petitioner restricts his prayer only in respect of order dated 31.05.2013 (Annexure P-3) with respect to the recovery of ₹1,24,238/-.

Counsel for the petitioner states that the petitioner does not press the challenge to the refixation of his salary as done by the respondents vide order dated 21.02.2013 (Annexure P-2).

The facts of the present case are that the petitioner has joined the services of the respondents/Corporation on 04.01.1978 as a Section Officer. He was promoted as a Sub-Divisional Engineer and was granted the proficiency step up of pay raising his pay from ₹10025/- to ₹10300/- w.e.f. 04.01.2002. Petitioner continued getting the said benefit till he superannuated on 30.09.2013.

Counsel for the petitioner states that after the retirement, keeping in view an objection raised by the Audit Department, the pay of the petitioner was refixed by the respondents, vide order dated 21.02.2013 (Annexure P-2). After the salary was refixed, vide order dated 31.05.2013 (Annexure P-3) it was found that the petitioner had drawn an excess amount of ₹1,24,238/- from 04.11.2002 till 31.12.2012.

Counsel for the petitioner states that though order (Annexure P-3) calculated the recovery of ₹1,24,238/-, but on recalculation, the same was found to be ₹1,12,990/-.

Counsel for the petitioner further states that as the petitioner was about to superannuate by the time order (Annexure P-3) was issued in May, 2013 and a sum of ₹50,000/- was deducted while paying the salary of the petitioner from June, 2013 till September, 2013 and rest of the deductions were made from the arrears of salary, for which the petitioner was entitled for on revision of the pay scale. In all, counsel for the petitioner states that a sum of ₹1,12,990/- has been wrongly deducted.

Counsel for the petitioner further states that the said recovery could not have been effected by the respondents in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab and**

others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195. It has been contended that as per the above-said judgment of Hon'ble Supreme Court, no recovery from the retired employees or who are due to retire within a period of one year, could be ordered and therefore, as the recovery order was passed in May, 2013 and the petitioner was to retire on 30.09.2013, the case of the petitioner was fully covered by the Clause 12(ii) of the direction given by the Hon'ble Supreme Court in Rafiq Masih's case (supra).

Counsel for the respondents states that the petitioner knew about the getting of excess amount for which he was not entitled for, therefore, his case is not covered by the judgment of Rafiq Masih's case (supra) and he defends the order of recovery (Annexure P-3) passed against the petitioner.

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

It is an admitted case that the benefit of Assured Career Progression Scheme after completing 24 years of service was extended to the petitioner with effect from the year 2002. Petitioner continued getting the same for next more than 10 years without any objection from the respondents. It is only when the petitioner was about to retire, the respondents noticed the same and passed an order of recovery after refixing his pay. Nothing has been pointed as to how the petitioner knew that he was getting more amount, than he was entitled for. No instance has been given that there was any misrepresentation on the part of the petitioner or that he claimed amount without any valid justification. There

is no undertaking given by the petitioner in respect of the fact that in case he was found getting excess amount than he was entitled for, he will refund the same.

Further, the judgment in **Rafiq Mashi's case (supra)** is clear and the relevant paragraph of the same 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.”

From the above, it is made clear that case of the petitioner is squarely covered under Clause 12(ii) of the said judgment. In the absence of malafide or any misrepresentation, the petitioner is entitled for the

benefit of Clause 12(ii) and therefore, as nothing could be pointed out by the counsel for the respondents about the information which the petitioner, according to the respondents, had about the non-entitlement of the said benefit, the petitioner is entitled for the benefit of Clause 12(ii) of the judgment in **Rafiq Masih's case (supra)**.

In view of the above, the recovery which has been ordered vide order dated 31.05.2013 (Annexure P-3) from the petitioner is contrary to the settled principle of law and the same is hereby set aside. Further, as the respondents have already recovered the said amount from the salary of the petitioner, they are directed to refund the same to the petitioner within a period of two months from the date of receipt of certified copy of this order.

Present writ petition stands allowed in the above terms.

January 29, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes