IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18078 of 2015
Date of decision : 01.10.2019

N.S. Kalsi

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Rakesh Sobti, Advocate for the petitioner.

Ms. Sunint Kaur, Assistant Advocate General, Punjab.

Mr. Rupinder Khosla, Senior Advocate with
Mr. Raj Partap Singh Brar, Advocate
for respondent No. 2-PUDA.

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Harsimran Singh Sethi, J. (Oral)

The grievance in the present writ petition is that upon fixation of pay of the petitioner by the respondents after his retirement, an excess amount of ₹2,13,633/- has been recovered from the pensionary benefits of the petitioner, which act of the respondents is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**.

The facts as stated in the writ petition are that petitioner was appointed as a Sectional Officer with the respondent-Punjab Urban

Development Authority on 31.07.1977. Thereafter he was promoted to the post of Sub Divisional Engineer on 29.06.1988. On attaining the age of superannuation petitioner retired on 30.04.2010. At the time when the petitioner was in service, the respondents had issued a Scheme called Assured Career Progression Scheme, under which, an employee, who though eligible for promotion but could not get the same and keeps on stagnating on the same post, is entitled for the benefit of increment on completion of 8, 16, 24 and 32 years of service. As the petitioner became entitled for the benefit of the increments under the Assured Career Progression Scheme, petitioner was granted the said benefits of the increments after rendering the required number of service under the Assured Career Progression Scheme. In the year 2009, upon the change of the Scheme for the grant of Assured Career Progression, which was to be granted after 4, 9 and 14 years instead of 8, 16, 24, 32 years of service, petitioner was granted the benefit as per the amended Scheme vide order dated 13.02.2009 (Annexure P-9). After granting the benefit, the pay of the petitioner was also re-fixed with effect from 1.1.1996, 1.1.1998 and 1.1.2003 by the respondents.

After the retirement of the petitioner on 30.04.2010, the respondents reviewed the grant of benefit to the petitioner as extended to him vide order dated 13.02.2009 granting him the benefit of Assured Career Progression Scheme after rendering 4,9 and 14 years of service and found that petitioner was not entitled for the same benefit and the mistake was corrected by the respondents and his pay was re-fixed and upon re-fixation, it was found that an excess amount of ₹2,13,633/- has been extended to the petitioner, which needs to be retained while paying the pensionary benefits of the petitioner. This order of retaining the excess amount of ₹2,13,633/- is under challenge in the present petition.

Upon notice of motion, respondents have filed the reply in which the respondents have stated that the benefit of the higher pay scale on completion of 4, 9 and 14 years of service under Assured Career Progression Scheme was wrongly granted to the petitioner and the excess amount, which is public money, was rightly retained by the department and the claim of the petitioner for the release of the same is liable to be rejected as petitioner cannot be allowed excess amount, which was wrongly extended to him while passing the order dated 13.02.2009 and the order dated 26.05.2015 (Annexure P-15) by which the benefit extended to the petitioner vide order dated 13.02.2009 was withdrawn, is perfectly valid and legal and, therefore, the consequence of the order dated 26.05.2015 (Annexure P-15) i.e. the retention of the excess amount, is also as per law and the petition is liable to be dismissed

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

It is not disputed that the respondents granted the petitioner the benefit of fixation of his pay under the Assured Career Progression Scheme after rendering 4, 9 and 14 years of service vide order dated 13.02.2009 (Annexure P-9). It was only after his retirement, the mistake was discovered by the respondent-PUDA and after giving a show cause notice to the petitioner, the benefit of Assured Career Progression Scheme after 4, 9 and 14 years of service granted to the petitioner vide order dated 13.02.2009 was withdrawn by passing order dated 26.05.2015. The re-fixation of salary is not under challenged by the petitioner and the petitioner only prays that the amount of ₹2,13,633/-, which has been retained by the respondents while releasing the pensionary benefits of the petitioner on the ground that the excess amount needs to be recovered, is under challenge

The submission of the respondents is that the public money, which was paid in excess to the petitioner, has rightly been retained/ recovered from the pensionary benefits of the petitioner.

Hon'ble Supreme Court of India has given the guidelines as to under what circumstances, the recovery cannot be made from the employee while deciding **Rafiq Masih's case (supra)**. In para 12 of the said judgment, it has been stated that no recovery from Class-III and Class-IV employees can be done and further no recovery can be done from the retired employees or the employees who are due to retire within one year of the said recovery. The relevant portion of the said judgment 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:-*
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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."

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

Learned senior counsel appearing on behalf of the respondents very fairly states that the recovery from the petitioner has been done out of his pensionary benefits after his retirement. Once, it is admitted that the petitioner had retired by the time the pay of the petitioner was re-fixed and recovery was done, the same is impermissible keeping in view the settled principle of law settled by the Honorable Supreme Court of India in **Rafiq Masih's case (supra)**. . Therefore, no recovery could have been ordered and the recovery/retention of the amount of the excess payment made to the petitioner is not permissible.

Keeping in view the above, the retention of the excess amount paid to the petitioner, which has been retained/recovered from the pensionary benefits of the petitioner amounting to ₹2,13,633/- be released to the petitioner within a period of 2 months from the date of receipt of certified copy of this order.

Writ petition is allowed in above terms.

October 01, 2019 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*