IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212 **CWP No.18650 of 2015**
Date of decision: 08.03.2019

Daya Nand **..Petitioner**

Vs.

State of Haryana & Ors. **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surinder Dagar, Advocate
for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

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HARSIMRAN SINGH SETHI, J.(ORAL)

In the present petition, the grievance, which has been raised by the petitioner is that the respondent-Department wrongly deducted an amount of ₹ 95,292/- alongwith interest from the General Provident Fund of the petitioner at the time of making payment of the GPF, after the petitioner retired from service on 30.04.2015.

As per the averments made in the writ petition, petitioner was working as a driver with the Haryana Roadways. He joined on the post of driver on 07.01.1990. Petitioner retired on 30.04.2015. After the retirement, the calculations were made for the release of the benefit to the petitioner. After making calculations, the amount of ₹ 4,25,544/- was paid to the petitioner after making certain deductions from total amount of ₹ 5,84,899/- by the respondents.

When the petitioner came to know about the said deduction, he approached the respondents and was told that the opening balance of the GPF account of the petitioner for the year

1994-95 was ₹ 10,588/- and in-advertantly by carrying forward said amount to the year 1995-96, the same was recorded as ₹1,05880/-. This mistake was detected and the calculations were redone wherein it was found that a sum of ₹ 95,292/- was wrongly credited in the account of the petitioner in the year 1995-96 and the said amount also carried interest and, therefore, the amount of ₹ 95,292/- along with interest was deducted. Petitioner has approached this Court by filing the present writ petition by relying upon the judgment of this Court in CWP No. 2799 of 2008 titled as **Budh Ram and others vs. State of Haryana and others,** to contend that no amount can be recovered from a retired employee and, therefore, the said amount needs to be refunded to the petitioner.

Upon notice of motion, the reply has been filed and the same stand as noticed above has been taken by the respondent in the reply as well. The relevant paragraph of the reply is as under:-

> "In the instant case, GPF closing balance for the year 1994-95 was Rs. 10,588/-. While carrying forward this balance to the year 1995-96 this was inadvertantly taken as Rs. 105880/- instead of correct balance of Rs. 10588/-. (True copy of GPF ledger card of 1991-95 and 1995-96 annexed as 'ANNEXURE R-1 & R-2'). Thus, GPF opening balance for the year 1995-96 was carried over in excess of Rs. 95292/- (Rs. 105880-10588) erroneously and inadvertantly. GPF statement for the year 1995-96 showing this excess amount of Rs. 95292/- and interest thereon was issued to the petitioner. GPF balance for this year and subsequent years till the retirement of the petitioner continued increasing with accruing interest due to erroneous and inadvertantly shown excess amount of Rs. 95292/- in his GPF account. The petitioner never pointed out this mistake on receipt of GPF statement for the year 1995-96. This excess amount of Rs. 95292/- along with interest amounting to Rs. 584899/- (Rs. 95292

+Interest Rs. 489607) was deducted/adjusted from the GPF A/c of the petitioner at the time of settling his dues on his retirement on 30.04.2015 and remaining GPF payment amounting to Rs. 425544/- was released in favour of the petitioner on 13.07.2015.

The Hon'ble Punjab & Haryana High Court while delivering judgment dated 17.03.2011 in similar case in CWP No. 8407 of 2010 Suresh Kumar V/s State of Haryana to which the answering respondent was also a party has held that "on due consideration of the matter, I am of the considered opinion that the contention raised by the learned counsel for the petitioner does not merit acceptance. The amount of Rs. 14662/- which was credited to the account of the petitioner was on account of some mistake in accounts and it was not on account of accrual of any benefit, increment or step-up in pay etc. and was thus wrongly given to him. It was thus evident that he was not entitled to the said amount and he wrongly retained the same. If a mistake had been committed by the respondent, the petitioner ought to have returned this amount or brought to the notice of the respondents but he withheld this amount wrongly and utilized the same for his own ends. He was thus not rightfully entitled to this amount. The respondents rightly deducted this amount along with interest from the GPF account of the petitioner at the time of settling his dues on account of his superannuation. An amount which has been wrongly withheld by the petitioner to which he was not rightfully entitled to, would not attract the ratio of judgment and even otherwise, the same does not enhance the case of the petitioner. Having regard to the aforesaid, the instant petition is held to be without any merit and the same is hereby dismissed. Copy of the same is annexed as 'ANNEXURE R-3.'

Thus the office of the answering respondent is legally

> authorized to recover the excess amount credited inadvertantly in GPF account of the petitioner."

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

It is not the case of the petitioner that the benefit which was given to the petitioner inadvertantly, by wrong interpretation to the rule, was being withdrawn, which cannot be done by the respondents after the retirement. In the present case, where inadvertantly while carrying forward the amount from the year 1994-95 to 1995-96, a sum of ₹ 95,292/- was wrongly added for which the petitioner was not entitled. Instead of carrying forward the amount of Rs. 10,588/- a sum of Rs. 105880/-was forwarded to the account of the petitioner, which gave undue enrichment to the petitioner without there being any entitlement of the same to the petitioner. The said amount, also carried interest and, therefore, respondents rightly recalculated and recovered the amount of Rs. 95,292/- along with interest, for which no grievance can be made.

In somewhat similar situations, this Court while deciding CWP No. 8407 of 2010 on 17.03.2011, dismissed a writ petition wherein also, while transposing the amount of the GPF, excess amount was transferred, which later was withdrawn. The said act of the State of Haryana was up-held. The relevant part of the judgment is as under:-

> "The petitioner has filed the instant petition with a prayer that the amount which the respondents have partially withheld and recovered from his G.P.F dues alongwith interest amounting to Rs.51,356/- be directed to be

disbursed to him alongwith interest at the rate of 15% per annum from March, 2009 till its actual realisation.

The case of the petitioner is that the respondents have deducted this amount on the plea that there were some excess amount paid to the petitioner amounting to Rs.14,662/- in the year 1995-96 and the respondents had recovered this amount alongwith interest which when calculated came to Rs.51,356/-.

The contention of the learned counsel for the petitioner is that there was no mis-representation on his part when the excess amount was paid to him and this on the parity of judgment rendered by Full Bench in CWP no. 2799 of 2008 titled as **Budh Ram and others vs. State of Haryana and others,** could not be recovered. The second contention that has been raised is that even if the deduction is said to be justified then also the respondents were only entitled to principal amount of Rs.14,662/- and they could not recover this amount alongwith interest.

Learned counsel for the respondents have controverted the contentions which have been raised before this Court to say that the amount was paid to the petitioner in excess which upon realisation was deducted from his GPF account and this amount of Rs.14,662/- was an erroneous entry made in his account and did not pertain to any benefit to which petitioner was legally entitled to.

On due consideration of the matter, I am of the considered opinion that the contention raised by the learned counsel for the petitioner does not merit acceptance. The amount of Rs. 14,662/- which was credited to the account of the petitioner was on account of some mistake in accounts and it was not on account of accrual of any benefit, increment or step up in pay etc. and was thus wrongly given to him. It was thus evident that he was not entitled to the said amount and he wrongly retained the same. If amistake had been committed by the respondents then the petitioner ought to have returned this amount or brought to the notice of the respondents but he withheld this amount wrongly and utilised the same for his own ends. He was thus not rightfully entitled to this amount. The respondents rightly deducted this amount alongwith interest from the GPF account of the petitioner at the time of settling his dues on account of his superannuation. An amount which has been wrongly withheld by the petitioner to which he was not rightfully entitled to, would not attract the ratio of judgment laid down in Budh Ram's case(supra), and even otherwise, the same does not enhance the case of the petitioner as this sort of eventuality is also discussed therein.

Having regard to the aforesaid, the instant petition is held to be without any merit and the same is hereby dismissed".

A bare perusal of the above order would show that not only the act of the State for recovery of said amount was up-held but even the judgment of Budh Ram's case, (supra) was also distinguished by the Coordinate Bench.

Case of the petitioner is similar to the above mentioned case and is squarely covered against him in respect of the prayer made in the present writ petition

In view of above, no fault can be found with the act of the respondent in recovering the extra amount paid to the petitioner along with interest from the GPF Account of the petitioner.

The present writ petition is dismissed.

No orders as to cost.

(HARSIMRAN SINGH SETHI)
JUDGE

March 08, 2019
Poonam Sharma

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No