IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 **CWP No.18249 of 2016**
Decided on : 22.10.2019

O.P.Gulati

... Petitioner

Versus

State Bank of Patiala & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Gurbachan Singh, Advocate for the petitioner.

Mr.Vikas Chatrath, Advocate, for the respondents.

G.S. Sandhawalia, J. (Oral)

In the present writ petition, filed under Article 226/227 of the Constitution of India, challenge has been raised to the order dated 16.10.2015 (Annexure P-2) and 23.10.2015 (Annexure P-4) whereby recovery of commutation installments is being done w.e.f. 01.10.2015 for a period of 42 months @ Rs.2467/- per month.

Counsel for the petitioner has relied upon the judgment of the Apex Court in **State of Punjab & others Vs. Rafiq Masih (White Washer) 2015 (4) SCC 334**, to contend that the petitioner retired on 30.06.2000 from the post of Superintendent Grade-I and recovery from a retired employee is not permissible, in view of the principle (ii) laid down in the above-said judgment.

The stand of counsel for the respondents, on the other hand, is that the petitioner had received the benefits of commuted pension which was for a period of 15 years and the commutation amount was paid on

02.09.2000. The same was due for restoration on 02.09.2015. The amount was regularly deducted upto February, 2012 but was not deducted inadvertently by the system of the respondent-Bank from March, 2012 to September, 2015, which led to the impugned order being passed on 16.10.2015. Reliance has, thus, been placed upon the undertaking which has been submitted on 03.08.2011 (Annexure R-1/1) to the Branch Manager of the erstwhile State Bank of Patiala (now State Bank of India, on merger). Reliance is, accordingly, placed upon the subsequent judgment of the Apex Court in **High Court of Punjab & Haryana & others Vs. Jagdev Singh 2016 (4) SCT 286** that principle No.(ii) of **Rafiq Masih** (supra) cannot apply when an undertaking is given.

It is further submitted that the petitioner is not that class of employee who would not understand the benefit of Commuted Value Pension (CVP) and thus, had continued to receive the excessive amount for a period of over 3 years and now, cannot submit that the recovery is being effected without any basis. It is further submitted that recovery is also at a nominal amount of Rs.2467/- per month, to offset the excess amount which has been paid.

The Apex Court, vide the judgment in **Jagdev Singh** (supra), dealt with a case which was of a Judicial Officer who had retired on 12.02.2003 and who had been served with a notice of recovery on 18.02.2004. It was noticed that on account of an undertaking given, he could not get the benefits of the revised pay-scales in the Selection Grade which had been allowed on 07.01.2002. The recovery notice had been quashed initially by this Court but the same was set aside by holding as under:

> "11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.
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> 12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.
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> 13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs."

In the present case also, it is to be noticed that it is not a case of the petitioner having drawing the amount for a long period. The excess amount was only paid from March, 2012 to September, 2015. When the petitioner was to receive his full pension, the said fact came to the notice of the respondent-Bank which issued the impugned order dated 16.10.2015, seeking to recover the excess amount which the petitioner had received for a period of over 3 years. Petitioner also having retired as Superintendent Grade-I, from the office of the Director, Public Instructions, would be conscious of the fact that he was receiving an extra amount, over and above his entitlement, but chose to receive the same and did not bring to the respondents the said fact. As per the Commutation Payment Order dated 13.07.2000 (Annexure P-1), the deduction was @ Rs.2467/- per month and he was drawing a reduced pension of Rs.3702/- per month instead of the basic pension of Rs.6169/- per month. Over the years, the benefits of the Pay Revisions would have taken place and correspondingly, he would have been given revised pension. The undertaking given on 03.08.2011 reads as under:

> "In consideration of your having at my request, agreed to make payment of Pension due to me every month by Credit to my account with you. I undersigned, agree and undertake to refund or make good any amount to which I am not entitled of any amount which may be credited to my account in excess of the amount to which I am or would be entitled.
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> I further hereby undertake and agree to bind myself and my heirs, successors, executers and administrators to indemnify the bank from and against any loss, suffered or inquired by the bank so credited my pension to my account under the Scheme and to forthwith pay the same to the Bank and also irrevocably authorize the bank to recover the amount due by debit to my said account or any other account/Deposit belonging to me in the possession of the bank."

The respondent-Bank is only trying to recover the excess amount paid, in nominal installments, which the petitioner was not entitled to receive, as per his undertaking. In such circumstances, keeping in view the judgment passed in **Jagdev Singh** (supra), this Court is of the opinion that the case would not fall under principle No.(ii) of **Rafiq Masih** (supra), as contended. No useful purpose, as such, now would be served in giving an opportunity of hearing to the petitioner, in view of the above facts and circumstances, qua the argument raised that the principles of natural justice have been violated when the impugned order was passed.

Accordingly, in view of the above discussion, finding no merit in the present writ petition, the same is dismissed. However, it is made clear that recovery shall not be beyond the installment amount of Rs.2467/- per month. Resultantly, the stay granted on 05.09.2016 also stands vacated.

(G.S. SANDHAWALIA)
JUDGE

October 22nd, 2019
sailesh

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No