

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

1. CWP-14902-2017

Jaswant Singh ..Petitioner  
Versus  
State of Punjab and others .....Respondents

2. CWP-14671-2017

Rajinder Kumar ..Petitioner  
Versus  
State of Punjab and others .....Respondents

Date of decision: - 26.03.2019

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Harnek Singh, Advocate  
for the petitioner in CWP-14902-2017.

Mr. Pankaj Mulwani, Advocate  
and Mr. Kunal Mulwani, Advocate  
for the petitioner in CWP-14671-2017.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

\*\*\*\*

**HARSIMRAN SINGH SETHI, J. (ORAL)**

By this common order, above-mentioned two Civil Writ Petitions are being disposed of as these involve same question of law and similar facts.

Counsel for the petitioner in both the above-said writ petitions state that the present writ petitions be treated only in respect of recovery of the amount as being ordered vide impugned orders and they are not challenging the refixation as done by the respondents.

In CWP No.14902 of 2017, the grievance which has been

raised by the petitioner is that the recovery has been ordered from him amounting to ₹2,15,318/-, vide impugned order dated 07.06.2017 (Annexure P-1) i.e. after his retirement.

The facts as mentioned in said petition are that petitioner was appointed as a driver with the Punjab Roadways on 09.02.1988 and he kept on working as such when he superannuated on 31.03.2017.

Counsel for the petitioner in CWP No.14902 of 2017 states that vide impugned order dated 07.06.2017 (Annexure P-1), the respondents have refixed the salary of the petitioner without giving any opportunity of hearing and by refixing the pay of the petitioner, the respondents have arrived at a decision that an amount of ₹2,15,318/- has been paid to the petitioner wrongly by giving him one extra increment while fixing his pay on 04.11.2006, which should be recovered. The said order of recovery is under challenge in the present writ petition.

Reply in CWP-14902 of 2017 has been filed on behalf of the respondents today in the Court and the same is taken on record. A copy thereof has been supplied to counsel for the petitioner.

In the said reply, the respondents have admitted that a recovery has been done from the petitioner amounting to ₹2,15,318/-, but the same was done after issuing him a show cause notice on 06.07.2017.

Counsel for the respondents states that in the year 2006, petitioner was wrongly given one increment while fixing his pay, which increment has been withdrawn by the respondents now and therefore, the mistake which occurred in the year 2006 has been rightly rectified by the respondents after the same came to their notice and hence, the

respondents were well within their rights to recover the amount of ₹2,15,318/-.

In respect of CWP No.14671 of 2017, petitioner-Rajinder Kumar had retired in May, 2016, whereas, the impugned order of the recovery was passed after his retirement on 23.06.2017. By the said order, a sum of ₹2,28,438/- was demanded back by the respondents on the ground that the same was excessively paid to the petitioner. The said recovery was ordered due to the re-fixation of pay of the petitioner w.e.f. 01.01.1993.

In the reply, nothing has been shown as to how the petitioner was responsible for the re-fixation of his pay w.e.f. 01.01.1993, which action was being revised by the respondents in the year 2017 by re-fixing his pay again w.e.f. 01.01.1993.

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

The respondents have admitted that by mistake, one extra increment was given while fixing the pay of the petitioners. There is not even a single averment to the effect that for the said mistake, the petitioners were responsible in any manner. Further, the pay was fixed by the respondents themselves and the said benefit was extended by respondents themselves to the petitioners, without there being any claim from him for the same. Once, the petitioners did not play any fraud or had misrepresented in any manner, the respondents cannot make the recovery of the amount and that too after the retirement of the petitioners.

As not only the petitioners had already retired by the time

when the recovery was ordered, but the benefit which was extended to the petitioners in the year 1993 or 2006 as the case may be, was being sought to be withdrawn in the year 2017 and that too after their retirement, which is not permissible as per the settled principle of law noticed above.

As per the settled principle of law settled by the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, the employees belonging to Class-III and Class-IV service and the retired employees or employees nearing their retirement, no recovery can be ordered from them. Relevant paragraph of the 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:-

- (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 plain reading of the above, it is clear that case of the petitioners is squarely covered by the above reproduced judgment.

In the present case, at the time of the recovery in July, 2017, the petitioners already stood retired. Further, the benefit, which was sought to be withdrawn, were given to the petitioners in the year 1993/2006 i.e. much prior to five years period as envisaged in para 12(iii) of the judgment in **Rafiq Masih's case (supra)**. The respondents counsel is unable to distinguish the case of the petitioners not being covered by the above-said judgment.

In view of the above, claim of the petitioners is allowed and impugned order dated 07.06.2017 (Annexure P-1), passed in CWP-14902 of 2017, by which the recovery of ₹2,15,318/- was ordered, is set aside. As the said recovery had already been stayed by this Court while issuing notice of motion on 31.07.2017, therefore, no further order is required to be passed in this regard.

Impugned order dated 19.07.2016 (Annexure P-4) in CWP No.14671 of 2017 is also set aside. In the present case also, as the recovery was stayed by this Court while issuing notice of motion on 20.07.2017, no further order is required to be passed.

Present writ petitions are allowed in the above terms.

( **HARSIMRAN SINGH SETHI** )  
**JUDGE**

**March 26, 2019**  
naresh.k

Whether reasoned/speaking?

Yes

Whether reportable?

Yes