

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

**CWP-19466-2016**

**Date of decision: - 21.08.2019**

**Jagdish Raj**

**....Petitioner**

**Versus**

**The Punjab State Power Corporation Limited and others**

**.....Respondents**

**CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present:- Mr. Pankaj Sharma, Advocate  
for the petitioner.

Ms. Jarnail Kaur Dhaliwal, Advocate  
for the respondents.

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

In the present writ petition, the challenge is to the recovery amounting to ₹2,00,551/-, which has been done from the gratuity of the petitioner. The challenge is on the ground that the said recovery has been done after refixing the salary of the petitioner after his retirement and that too without following the rules of natural justice and therefore, the petitioner is praying for issuance of a direction to the respondents to refund the amount of ₹2,00,551/-, which has been deducted by the respondents on account of excess payment made to the petitioner.

The facts which have been stated in the present writ petition are that petitioner was appointed as a T-Mate with the Municipal Council,

Amritsar on 21.06.1979. Thereafter, he was promoted as Assistant Lineman on 31.03.1994. Thereafter, he was again promoted as a Lineman from which post he was ultimately retired on 31.10.2015. After the retirement, the case of the petitioner was sent to the appropriate authority for sanctioning of the pension and at the relevant time, the audit department raised an objection that the pay of the petitioner was wrongly fixed and the pay was liable to be refixed keeping in view the policy dated 07.01.2013. Upon refixation of the salary of the petitioner in the year 2016, respondents deducted a sum of ₹2,00,551/- from the gratuity of the petitioner on the ground that excess payment was made, which action of the respondents is under challenge in the present writ petition.

Counsel for the petitioner argues that though, the salary of the petitioner was refixed after his retirement, but for the purpose of present writ petition, petitioner is not challenging the refixation and is only restricting his claim to the recovery which has been done from the gratuity of the petitioner after refixing his salary.

Counsel for the petitioner further argues that keeping in view 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**, no recovery can be made from a retired employee and therefore, the respondents are liable to be directed to refund the amount of ₹2,00,551/-, which has been deducted from the gratuity of the petitioner.

Upon notice of motion, the respondents have filed the reply.

In the reply, the respondents have submitted that while granting the proficiency step up to the petitioner after completing eight

years of service, the pay of the petitioner was wrongly fixed when he was promoted to the post of Assistant Lineman on 31.03.1994. As per the respondents, the benefit of the proficiency step up was to be adjusted at the time of his promotion as ALM, which was not done and therefore, the petitioner continued to draw more salary, than what he was entitled for. As per the respondents themselves, after the objection was raised by the audit department in the year 2016 i.e. after the retirement of the petitioner, salary of the petitioner was refixed and after the refixation, it was found that petitioner has been paid an excess amount of ₹2,00,551/-, which needs to be recovered.

Counsel for the respondents vehemently argued that the salary of the petitioner was wrongly fixed and the said mistake was rectified and therefore, once the mistake was rectified, the respondents are well within their right to effect the recovery as the same was public money.

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

The only question, which is raised before this Court in the present writ petition, is as to whether, the recovery of an excess payment of ₹2,00,551/- could have been done from the gratuity of the petitioner or not after his retirement?

It is not disputed that it is only after the retirement of the petitioner, his salary was refixed and the salary was refixed unilaterally without affording any opportunity of hearing to the petitioner. Though, the petitioner is not challenging the refixation, but the challenge is only to

the recovery of the excess amount on account of the said refixation, which has been done after his retirement. The law as to whether the recovery can be done from the retired employee or not is well settled.

The Hon'ble Supreme Court in **Rafiq Masih's case (supra)** has laid down the guidelines as under what circumstances the recovery cannot be done from the employees. The relevant part 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:-

- (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.”

A bare perusal of the above reproduction shows that no

recovery can be ordered from a retired employee. It is not disputed by the respondents that on the date when the pay of the petitioner was refixed and recovery of the excess payment was done, petitioner had already retired from service. Once, a bar has been imposed by the Hon'ble Apex Court on effecting the recovery from a retired employee, the action of the respondents in recovering the amount of ₹2,00,551/- from the gratuity of the petitioner cannot be sustained and accordingly, the said act of the respondents is quashed and set aside.

In view of the above, the respondents are directed to release the payment of ₹2,00,551/-, which has been deducted from the gratuity of 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.

( HARSIMRAN SINGH SETHI )  
JUDGE

August 21, 2019  
naresh.k

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| Whether reasoned/speaking? | Yes |
| Whether reportable?        | Yes |