

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14325 of 2018

Date of decision: 18.10.2019

Salamat Ali

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gopal Singh Nahel, Advocate
for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

Mr. V.K. Sandhir, Advocate
for respondent No.4.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the grievance which is being raised by the petitioner is that at the fag end of his career, when he was about to retire on 31.03.2016, the respondents have passed impugned order dated 21.03.2016 (Annexure P/1) for recovery of Rs.1,04,622/- by refixing his salary. Learned counsel for the petitioner argues that no recovery can be ordered from an employee, who is nearing his retirement or is already retired keeping in view the settled law settled by Hon'ble Supreme Court of India in **State of Punjab & Others vs Rafiq Masih (White Washer) etc (2014) 8 SCC 883.**

The facts as mentioned in the writ petition are that the petitioner

joined as Panchayat Secretary on 4.3.1977. Thereafter, he was promoted as Panchayat officer on 17.10.2012, from which post, he ultimately retired on attaining the age of superannuation on 31.03.2016. On 21.03.2016 i.e. about 10 days prior to retirement of the petitioner, respondents passed an order that the salary of the petitioner was wrongly fixed and upon rectifying the said mistake by refixing his salary, it is found that petitioner was paid Rs.1,04,622/- in excess, which amount is to be recovered from the petitioner and Rs.10,000 was recovered from the salary of the petitioner in the month of February, 2016 and remaining was to be recovered from leave encashment, for which the petitioner became entitled after his retirement. In the present writ petition, the challenge is to said order of recovery dated 21.03.2016 (Annexure P/1) on the ground that no recovery could have been done by the respondents as the petitioner was not responsible for the excess amount, which was paid to the petitioner, as the salary was fixed by the respondents themselves and no fraud was committed by the petitioner in any manner, therefore the payment of excess amount could not have been recovered from the petitioner.

Upon notice of motion, respondents including respondent No.4 have filed reply. In his reply, respondent No.4 has stated that petitioner was aware of the fact that he was getting higher salary than he was entitled for and, therefore, excess amount paid to the petitioner has rightly been ordered to be recovered from him.

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

The only question, which arises for consideration of this Court in

the present writ petition, is as to whether an employee, who is on the verge of his retirement, recovery of the excess payment can be done from his/her pensionary benefits after refixing his salary. This question has already been answered by Hon'ble Supreme Court of India while deciding Rafiq Masih's Case (Supra), wherein guidelines have been given as to under what circumstances recovery cannot be ordered. Relevant paragraph of the said judgement is as under.

“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 said paragraph shows that no recovery can be ordered from a retired employee or from an employee who is nearing his retirement. In the present case, petitioner was ten days away from his retirement when impugned order dated 21.03.2016 (Annexure P/1) was passed.

Counsel for the respondents has not been able to point out any ground, as to why, the judgment in Rafiq Masih's Case (Supra) is not applicable upon the petitioner. Once the petitioner was nearing his retirement and was only ten days away from the same and the recovery of excess amount is sought to be done from his leave encashment after refixing his salary, the same is not permissible keeping in view the law laid down by Hon'ble Supreme Court of India in Rafiq's Masih's Case (Supra). The action of the respondents in recovering the excess amount paid to the petitioner after refixing his salary is held to be bad and, is accordingly, set aside.

Counsel for the petitioner argues that a sum of Rs.10,000/- has been recovered from the salary of the petitioner in the month of February, 2016 and further recovery was stayed by this Court while issuing notice of motion. Keeping in view the order passed today, as recovery is held to be bad, respondents are directed to release the sum of Rs.10,000/- which has been recovered from the salary of the petitioner in the month of February, 2016 within a period of one month from the date of receipt of certified copy of this order. If any other retiral benefit of the petitioner has been withheld by the respondents, the same shall also be released to him within time framed as above.

The present writ petition stands allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

18.10.2019
aarti

- | | | |
|----|--------------------------------|--------|
| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |