IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21798 of 2015
Date of decision: 05.11.2019

Amarjeet Singh Sobti .... Petitioner

versus

Registrar, Co-operative Societies Haryana and others .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Singh, Advocate for
Mr. Manoj Kumar Taya, Advocate
for the petitioner.

Mr. Arun Sharma, Advocate
for respondent No.2.

Mr. C.S. Bakhshi, Addl. A.G. Haryana.

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HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the grievance which is being raised by the petitioner is that the respondents have wrongly calculated the number of days of leave, which the petitioner can encash after his retirement. Further challenge is to order dated 09.09.2013 (Annexure P/16), by which, two increments which were given to the petitioner on account of contribution towards ESI Scheme w.e.f. 28.04.1994, have been withdrawn and consequential refixation of his salary and the recovery of amount by the respondent-bank vide order dated 30.08.2014 (Annexure P/17).

At the time of hearing of the present writ petition, learned counsel for the petitioner restricts his argument only with regard to the recovery of the amount upon refixation of pay of the petitioner, which has been recovered from the retiral benefits of the petitioner.

As per the facts mentioned in the writ petition, the petitioner was appointed as Clerk in the Haryana State Co-operative Federation Limited on 17.06.1976. Thereafter, the petitioner went on deputation for a period of one year in Haryana State Co-operative Land Development Bank Ltd. and was ultimately absorbed in the said bank vide order dated 08.04.1996 (Annexure P/4). While working with the respondent-Bank, the petitioner retired on attaining the age of superannuation on 31.12.2012. The retiral benefits of the petitioner were calculated by the respondents and an amount of Rs.3,41,268/- was released on account of gratuity and with regard to the leave encashment, as the petitioner had worked with two authorities, payment for 154 days of earned leave was released by respondent No.3 and payment for 146 days was to be paid by respondent No.2. After the retirement of the petitioner, the respondents passed an order dated 09.09.2013 (Annexure P/16) by which, two increments which were given to the petitioner on account of contribution towards ESI Scheme w.e.f. 28.04.1994, were withdrawn and on withdrawal of two increments, the pay of the petitioner was refixed by the respondents and upon refixation, it was found that the petitioner has been paid excess amount. In order dated 09.09.2013 (Annexure P/16), by which the benefit of two increments was withdrawn and pay was refixed, there was no mention of recovery of the excess amount to be done from the petitioner but the respondent No.3-Bank recovered an amount of Rs.9,688/- and Rs.16,947/- on account of excess payment from the retiral benefits of the petitioner. The prayer of the petitioner is that after the retirement of the petitioner, the respondents could not have refixed his salary by withdrawing the benefit of two increments which was extended to the petitioner in the year 1994 and further in any case, recovery of excess amount is not permissible to be done from a retired employee, especially, when there was no misrepresentation by the petitioner at any given point of time, when the benefit of two increments was given to him in the year 1994.

Learned counsel for the petitioner restricted his claim only with regard to the recovery of the excess payments from the retiral benefits of the petitioner.

Upon notice of motion, respondents have filed reply. In the reply, filed on behalf of respondent No.2, it has been stated that petitioner has already been released the benefit of leave encashment, for which he was entitled as being claimed in the present writ petition i.e. leave encashment of 146 days. Learned counsel for the respondents states that benefit of two increments in lieu of contribution in ESI Scheme was wrongly given to the petitioner and, hence, was rightly withdrawn from him and the pay of the petitioner was correctly fixed thereafter.

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

It is a matter of fact that pay of the petitioner was revised by the respondents after his retirement and that too by withdrawing the benefit of two increments, which was extended to the petitioner in the year 1994. The said benefit was withdrawn in the year 2013 i.e. approximately 19 years after the said benefit was extended to the petitioner. Even in the order, by which, the said benefit has been withdrawn, there is no mention of the recovery of the excess amount. Even in the order refixing salary of the petitioner, there is no word that the recovery is to be made from the petitioner of the excess amount but from the retiral benefits of the petitioner, an amount of Rs.9,688/- and Rs.16,947/- has been recovered. The recovery has been effected by the respondents without there being any order to the said effect, which is not at all permissible. Unless and until there is an order passed by the authority to recover the amount, no recovery can be effected from an employee.

Even otherwise, it is a settled principle of law that no recovery can be done after the retirement of an employee or when an employee is nearing his retirement and also when the benefits which is stated to be withdrawn, for which the excess amount has been paid is being withdrawn after period of five years. Honble Supreme Court of India in ***State of Punjab & Others vs Rafiq Masih (White Washer) etc (2014) 8 SCC 883*** has laid down the guidelines as to under what circumstances, recovery cannot be effected from an employee. Relevant paragraph 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.
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> (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.
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> (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.
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> (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.

The case of the petitioner with regard to challenge to the recovery of the excess amount after his retirement is covered by Clause (i) and (iii) of the judgment in **Rafiq Masih's case (supra).**

In view of the above, the recovery of the excess amount, which has been effected from the petitioner from his retiral benefits is held to be bad and the same is set aside.

Learned counsel for the petitioner submits that payment of Rs.42,172/- on account of leave encashment has been released after more than two and a half years of the retirement of the petitioner, which is clear from order dated 30.09.2015 (Annexure R-2/3) attached by the respondents with their reply, and, therefore, the petitioner is entitled for interest on the said amount keeping in view the law laid down in ***A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468*** .

Learned counsel for the respondents has not been able to explain, as to why, an amount of Rs.42,172/- on account of leave encashmen, has been released to the petitioner after more than two and a half years of his retirement. There is no justification given for retaining the said amount by the respondents.

A Full Bench of this Court in ***A.S. Randhawa vs. State of Punjab 1997(3) S.C.T. 468*** has held that an employee will be entitled for release of his pensionary benefits within a reasonable time after his/her retirement and the reasonable time as per the Full Bench is two months. Relevant paragraph of the judgment is as under:-

> "Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."

The case of the petitioner is fully covered for the grant of interest keeping in view the directions given by the Full Bench in A.S. Randhawa's case (supra). Not only this, a Co-ordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana 2014 (13) RCR (Civil) 355*** has held that where an amount is retained and used by the respondents/employer, an employee will be entitled for interest on the same. Relevant paragraph of the judgment is as under:-

> "The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."

Keeping in view the above, the present writ petition is allowed. The petitioner is held entitled for interest on amount of Rs.42,172/- released on 30.09.2015, on account of leave encashment @ 9% per annum from the date, the same became due till the amount was actually released to the petitioner.

Let computation of the interest, for which the petitioner is entitled as per this order be carried out and the excess amount, recovered from the petitioner be refunded to him within a period of two months from the date of receipt of copy of this order and the payment so calculated be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
05.11.2019 **JUDGE**
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No