

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

(207)

CWP-25057-2013

Date of Decision: November 14, 2019

Avinash Sharma

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Sharma, Advocate, for the petitioner.

Ms. Sunint Kaur, Assitant Advocate General, Punjab.

Mr. P.S. Dhaliwal, Advocate, for respondents No. 3 & 6.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that after four years of the retirement of the petitioner on 31.10.2009, the salary of the petitioner was refixed by withdrawing certain benefits, which were extended to the petitioner during her service career and on account of withdrawal of the benefits, pay of the petitioner has been refixed and the respondents found that an excess payment of Rs.1,14,195/- has been given to the petitioner, which needs to be recovered.

Learned counsel for the petitioner states that petitioner is not challenging the re-fixation of her salary. The grievance is only with regard to the recovery of the excess amount of Rs.1,14,195/- after the retirement.

The facts, as stated in the writ petition, are that the petitioner joined as a Staff Nurse on 26.09.1973 on adhoc basis and the services of the petitioner was subsequently regularized w.e.f. 05.05.1975. Thereafter, petitioner was sent on deputation to the Chandigarh Administration in October, 1984 and continued working as Staff Nurse at General Hospital,

Sector 16, Chandigarh till she attained the age of superannuation on 31.10.2009, when she ultimately retired. After the retirement, petitioner approached this Court by filing CWP No.8883 of 2011 as her retiral benefits were not being released by the respondents and the said writ petition was disposed of on 29.01.2013 on the ground that the retiral benefits have already been sanctioned and the amount will be disbursed to the petitioner within a period of four weeks.

Petitioner has averred that even after the passing of the order dated 29.01.2013, the respondents took sufficiently long time to release the benefits and the benefits of the petitioner were released only after re-fixation of the salary of the petitioner by withdrawing the grant of increment to the petitioner, which were granted after 8 and 16 years of regular service. Out of the total amount of gratuity i.e. Rs.4,77,147/-, the respondents have recovered an amount of Rs.1,14,195/- and only released the remaining amount of Rs.3,62,952/-. The challenge in the present writ petition is to the order of the recovery of the excess amount of Rs.1,14,195/-.

Upon notice of motion, the respondents have filed the reply in which, it has been stated that the benefit of increment granted after rendering 8 and 16 years of service, was wrongly granted to the petitioner and therefore, the said benefit was rightly withdrawn and the pay of the petitioner was re-fixed and upon re-fixation, it was found that an excess amount of Rs.1,14,195/- has been extended to the petitioner, which needed to be recovered and has been rightly recovered. The relevant paragraphs of the reply are as under:-

“3. That the pension case of the petitioner was sent to the office A.G. Punjab, however, it was realized that wrong addition of benefit had been granted to the petitioner on

completion of 8 years and 16 years of regular service. Thereafter, the Accountant General (A&E), Punjab and U.T. Chandigarh vide letter dispatch no. PEN-08/21812102 36/2013-14/80025922 dated 23.1.2013, had duly approved the qualifying service of the petitioners however, the A.G. Punjab had given remarks that "Recovery of Rs.1,14,195/- may be watched", thus due to wrong fixation of salary the Accountant General, Punjab pointed out of the deducting recovery of Rs.1,14,195/- from the gratuity amount of the employee, payment of remaining amount of Rs.3,62,952/- was released on 12.3.2013. Further, the pension of Rs.11,385/- had been released to the petitioner, as per rules, but as the employee/petitioner had got her pension commuted, therefore, she was entitled to pension of Rs.6831/- per month.

4. That so far the recovery of Rs.1,14,195/- effected from the employee, it is submitted that petitioner/employee was granted benefits of ACP from wrong date, which was later on corrected, and due to this reason, recovery of excess amount of Rs.1,14,195/- released to the petitioner was deducted from DCRG.

In view of the above mentioned judgments, policy and contentions, it is most respectfully submitted that the order for effecting recovery from the petitioner from the amount of leave encashment of the petitioner is passed in accordance with law, and no illegality has been committed while passing this order. Hence, the present writ petition is liable to be dismissed."

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

The only question which arise for the consideration before this Court is whether the recovery of Rs.1,14,195/- could have been done from the retiral benefits of the petitioner.

It is an admitted fact that the petitioner retired on attaining the age of superannuation on 31.10.2009. The respondents did not release the

benefits to the petitioner for a period of more than four years for which the petitioner had to approach this Court. Further, without giving any opportunity of hearing to the petitioner, the respondents withdrew the benefits of increments, which were extended to the petitioner after rendering 8 and 16 years of regular service and the pay of the petitioner was re-fixed after more than four years of her retirement and the respondents recovered an amount of Rs.1,14,195/- which was excess amount paid to the petitioner over and above her entitlement keeping in view the re-fixed salary. It is a settled principle of law that the recovery cannot be done without giving any opportunity of hearing. Further, the Hon'ble Supreme Court of India has issued guidelines as to under what circumstances the recovery cannot be done. While deciding State of Punjab & Others vs Rafiq Masih (White Washer) etc (2014) 8 SCC 883, in paragraph 12, certain categories have been culled out under which, the recovery cannot be effected by the Government. Relevant paragraph of the said judgment 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.”

As per clause (i) and (ii), the recoveries cannot be done from a retired employee or an employee who is nearing his/her retirement. In the present case, the recovery has been done after four years of the retirement of the petitioner and that too after refixing her salary after retirement, the same is not permissible as per the judgment of the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra)**.

Learned counsel for the respondents argues that recovery was done from the petitioner in the year 2013 whereas the judgment of the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra)** was delivered in December, 2014 and therefore, the judgment is prospective in nature and cannot be made applicable to the case of the petitioner where the recovery was effected much prior to the date of the pronouncement of the said judgment. This question has already been considered by this Court in **LPA No.2448 of 2016 titled as State of Punjab and others Vs. Amrik Singh and others, decided on 09.08.2018**. The Division Bench of this Court has held that the argument that the **Rafiq Masih's case (supra)** will apply prospectively cannot be accepted as no limitation of that kind has been imposed by the Hon'ble Supreme Court of India and the cases which are pending consideration, will be covered by **Rafiq Masih's case (supra)**.

The relevant portion of the order passed by the Division Bench in this

regard is as under:-

“The contention that the principles laid down in Rafiq Masih will apply 'prospectively' cannot be accepted as no such limitation has been imposed by the Hon'ble Supreme Court. Taking into consideration the current status of the respondents, namely, that many of them have retired or are near retirement and the fact that they are holding Group 'C' & 'D' posts, we are satisfied that no interference in the discretion exercised by learned Single Judge is called for.”

Keeping in view the above, recovery of the excess amount of Rs.1,14,195/- sought to be done from the retiral benefits of the petitioner is held to be bad and is accordingly set aside. The amount of Rs.1,14,195/-, which has been recovered from the gratuity of the petitioner, be released to the petitioner within a period of two months from the receipt of the certified copy of this order.

The writ petition is allowed in above terms.

November 14, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No