IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18510 of 2017
Date of decision: 26.8.2019

Balwant Singh

...Petitioner

Versus

Director General and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Rajeev Anand, Advocate for the petitioner

Mr. Shobit Phutela, Advocate for
Mr. Puneet Bansal, Advocate for respondents no.1 and 2.

Mr. Mahesh Dheer, Advocate for respondent no.3

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G.S.SANDHAWALIA, J. (Oral)

Petitioner has filed the present petition under Article 226/227 of the Constitution of India challenging the order dated 23.5.2016 (Annexure P/7) whereby recovery of ₹ 2,47,902/- has been ordered to be done by the respondent bank from the pension of the petitioner by fixing an installment of ₹ 3,000/- per month from June, 2016 till the amount is fully recovered.

The reason for recovery as such is that the date of birth of the petitioner was wrongly shown as 1.1.1918 instead of 24.7.1943. Therefore, he was wrongly paid old age benefit since 1998.

In the opinion of this Court the matter is squarely covered by the observations of the Apex Court in **State of Punjab and others Vs.**

Rafiq Masih (White Washer) etc. 2015 AIR (SC) 696 which though sought to be distinguished by the counsel for the bank by referring to subsequent judgment in **High Court of Punjab & Haryana & others Vs. Jagdev Singh 2016(4) S.C.T. 286** on the ground that undertaking as such was given by the petitioner (Annexure R-3/6) as to the refund of excess amount paid to him.

Counsel for the petitioner has restricted his argument only on the recovery issue and submits that the pension of the petitioner has already been refixed.

Regarding element of disability pension in the present petition for which prayer has been made, this Court feels that only on account of cause of action having been arisen on 23.5.2016 would not entitle the petitioner to claim disability pension as the same has not been asked for at an earlier point of time as the petitioner had been boarded out from the Border Security Force on 14.10.1978 (Annexure P/3). In such circumstances, claim of disability pension is disallowed on the ground of delay and laches.

The facts which would necessary for adjudication of the present writ petition are that the petitioner has been enrolled in B.S.F. on 1.9.1965 and as noticed he was boarded out as Constable on 14.10.1978. His PPO (Annexure P/4) was forwarded at that point of time to the concerned quarters whereby his basic pension as such had been fixed at ₹ 75/- per month. Thereafter, as per recommendations of various pay commissions of Central Government revision of his pension as such was carried out and resultantly the basic pension of petitioner was fixed at ₹ 3500/- per month + RIP with effect from 1.1.2006 till his death on the basis of his pay scale of

₹ 20,200 + 1800/- as per 6th Central Pay Commission.

A perusal of the chart which is appended with Annexure P/7 would go on to show that on account of his pension being fixed at ₹ 3500/- per month he was getting additional amount of ₹ 1400/- per month with effect from September, 2008 which is now sought to be recovered. As there was a difference of various amounts ranging from ₹ 1624/- to ₹ 3938/- from September, 2008 to April, 2016, the amount has swelled to ₹ 2,47,902/-. Thus, it is apparent that from the year 2008 till 2016 the respondents had slept over on the issue and failed to make necessary correction and order dated 23.5.2016 (Annexure P/7) whereby show cause-cum-decision as such was communicated to the petitioner that in case he wanted to refund the amount in lump sum he could deposit the same.

The Union of India has taken the plea that the petitioner is not entitled for the old age pension being below the age of 80 years on account of the fact that he was born on 24.7.1943.

The bank on the other hand pleads that on account of undertaking (Annexure R-3/6) given by the petitioner, the writ petition is not maintainable as such and the bank has a right to recover the excess amount paid to the petitioner.

The issue is no longer res-integra. In the judgment of **Rafiq Masih's** case (Supra), the Apex Court as such has held that a retired employee or an employee about to retire, is a class apart whose earnings have substantially dwindled. Recovery from such set of employees where payment have been made for a period in excess of five years before the order of recovery was issued, the recovery would be impermissible in law. The case of the petitioner as such falls within the said observations which are reproduced as under:-

> " ...It is apparent from the conclusions drawn in Syed Abdul Qadir's case (supra), that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.
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> xxx xxx xxx
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> 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:
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> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (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.
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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.
>
> (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."

Reliance upon the judgment in **Jagdev Singh's** case (supra) as such by the counsel for the bank would not be applicable since it was a case of a Judicial Officer who had given the benefit of the revised pay scale in the selection grade allowed to him on 7.1.2002. He had retired on 12.2.2003 and on 18.2.2004 a letter for recovery of ₹ 1,22,003/- was served upon him by the Registrar of this Court which he had challenged. It was accordingly held that it is not a case that falls within the categories as fixed in **Rafiq Masih's** case (Supra) where excess payment had been made for a period of over five years and the recovery as such had been sustained. In such circumstances, the Apex Court had upheld the order of recovery and set aside the judgment of this Court which had quashed the recovery order.

The facts of the present case as noticed are not similar as to **Jagdev Singh's** case (supra). The employee in the present case had retired way back in 1978 and drawing old age pension from the year 2008 till 2016. The respondent bank and the employer as such never got his pension corrected till 2016. Thus, the petitioner being a senior citizen having been born in the year 1943 is entitled to the benefit of observations of the Apex Court in **Rafiq Masih's** case (Supra).

It is also to be noticed that the petitioner as such had been boarded out from the B.S.F. as Constable. Thus he falls in the categories of Group C and D employees as mentioned in the **Rafiq Masih's** case (Supra) and also for that reason recovery as such would not be justified in the facts and circumstances of the case.

Accordingly, the present writ petition is partly allowed and the interim order dated 21.8.2017 whereby recovery of ₹ 2,47,902/- was stayed is confirmed. However, it is made clear that it is open to the respondents to refix the pension of the petitioner as per relevant rules and instructions.

August 26, 2019 **(G.S.SANDHAWALIA)**
Pka **Judge**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/Nos