IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19484 of 2017
Date of Decision : 21.05.2019

Rajinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. H.K. Brinda, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab for respondents No. 1, 2 and 4.

Ms. Kanchan Sehgal, Advocate for respondent No. 3.

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Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the challenge is to the order dated 12.04.2017 (Annexure P-6) and order dated 07.07.2017 (Annexure P-8) by which recovery has been imposed upon the petitioner by re-fixing his salary after his retirement.

As per the facts mentioned in the writ petition, petitioner was appointed as a Forest Guard in the Department of Forest in State of Punjab on 16.05.1981. Thereafter, in the year 2003 petitioner was promoted as Block Officer and he continued working as Block Officer till 19.11.2008 when he was promoted as Deputy Range Officer. After the promotion, petitioner was sent on deputation in the Punjab State Forest Development Corporation Limited, Rupnagar. Petitioner was to superannuate on

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31.10.2016 and he requested that he be brought back in the State of Punjab before his retirement.

Learned counsel for the petitioner argues that as the petitioner was nearing his retirement, his case was sent to the Accountant General, Punjab for computing his pensionary benefits and vide order dated 18.10.2016 (Annexure P-3), Accountant General, Punjab raised an objection that one increment was wrongly granted to the petitioner w.e.f. 01.01.2009 and, therefore, the same needs to be withdrawn and his salary needs to be re-fixed. Before any action could be taken on the objection so raised by the Accountant General, Punjab, petitioner retired from service on attaining the age of superannuation on 31.10.2016.

Keeping in view the objection raised by the Accountant General, Punjab, respondents re-fixed the salary of the petitioner in December, 2016 and upon re-fixation, an amount of ₹5932/- was sought to be recovered for the excess payment made from 01.01.2009 till 24.08.2009 and by another order dated 07.07.2017 (Annexure P-8), recovery was calculated to the tune of ₹90,490/- for the period 25.08.2009 till 31.10.2016. These two orders calculating and effecting the recovery to be made from the petitioner dated 12.04.2017 and 07.07.2017 (Annexures P-6 and P-8) respectively, are under challenge in the present writ petition.

Upon notice of motion, the respondents have filed the reply in which, again it has been reiterated that keeping in view the objection raised by the Department of Audit, the pay of the petitioner was re-fixed and the consequent recovery has been ordered, which is perfectly valid and legal as the petitioner was wrongly extended the benefit of increment w.e.f. 01.01.2009, which has been withdrawn rightly. The relevant portion of the

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reply is as under:-

> *"6. That the pension case of the petitioner was sent to Accountant General Punjab vide Divisional Forest Officer Rupnagar letter no. 3957 dated 12.09.2016 but Accountant General Punjab raised some objections/clarifications vide their letter no. PEN02/CH-5/PE/10/16/60126223/ 1016101143/PE/16/10/80115342 dated 18.10.2016 the operating portion of which is reproduced here under:-*
>
> > *"PAY FIXED AS ON 01/01/09 @ 17930/- AFTER GRANTING ANNUAL INCREMENT WHICH IS NOT CORRECT, BECAUSE ON A/C OF PROMOTION ON 19/11/08 BENEFIT OF NEXT G.P. AND PROMOTIONAL INCREMENT HAS BEEN GRANTED THEREAFTER NEXT ANNUAL INCREMENT IS ADMISSIBLE AFTER 12 MONTHS I.E. 01.11.2009 INSTEAD OF 01.01.2009. THIS MAY BE LOOKED INTO AND PAY REFIXED ACCORDINGLY."*
>
> *In this regard Divisional Forest Officer Rupnagar sent a letter no. 6152 dated 9.12.2016 to the Divisional Forest Officer Wildlife Hoshiarpur to refix the pay of the petitioner as per Accountant General Guidelines/Instructions. After that Divisional Forest Officer Wildlife Hoshiarpur refixed/corrected the pay of the petitioner in the service book according to the Guidelines in Punjab Civil Services (Revised Pay) Rules, 2009 and informed to Divisional Forest Officer Rupnagar vide No. 2321 dated 19.12.2016 and the recovery amount of Rs. 5932/- for the period 01.01.2009 to 28.04.2009 calculated by the Divisional Forest Officer Wildlife Division Hoshiarpur vide office order no. 01 dated 12.04.2017. Thereafter Divisional Manager, PSFDC S.A.S. Nagar calculated recovery amount of Rs. 90490/- w.e.f. 25.8.2009 to 31.10.2016 vide his office order No. 9 dated 07.07.2017.*
>
> *7. That the Accountant General Punjab sanctioned the gratuity amount to the petitioner vide GPO No.*

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> *Punjab/1217056678 dated 24.3.2017 with the direction that before making the payment to the petitioner to deduct the recovery of pay from the DCRG. Divisional Forest Officer Rupnagar deducted the recovery amount of Rs. 5932+90490 = Rs. 96422/- from the DCRG vide order Endst. No. 2736-39 dated 13.7.2017 as per rules."*

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

At the time of the arguments, learned counsel for the petitioner states that the petitioner is not challenging the re-fixation but only the recovery, which has been ordered by the impugned orders, even though the pay of the petitioner was fixed unilaterally by the respondents without giving him any opportunity of hearing.

The argument which has been raised by the counsel for the petitioner is that respondents could not have re-fixed his pay after his retirement and order consequent recovery vide the impugned orders, as the same is not permissible under law. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and Ors. 2015(4) SCC 334,*** to contend that no recovery could have been ordered from a retired employee and petitioner had already retired by the time, the impugned orders were passed.

On the other hand, learned counsel for the respondents argues that once a mistake was detected, the State was within its right to rectify the same, which act has been undertaken and, therefore, the claim of the petitioner qua the impugned orders is liable to be rejected.

Hon'ble Supreme Court of India in ***State of Punjab and others***

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Vs. Rafiq Masih (White Washer) and Ors' case (supra) has laid down as to under what circumstances, recovery can be ordered from an employee. As per the said judgment, no recovery can be ordered from an employee, who has retired or who is near retirement and further that if the recovery is an outcome of an order, by which benefit already extended to an employee is being withdrawn and the said withdrawal is after a period of five years of the grant of said benefit, the recovery cannot be ordered. The relevant portion 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."*

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The case of the petitioner in the present case is squarely covered by the said judgment as in the present case recovery was ordered from the petitioner after re-fixing salary after his retirement and the recovery orders were also passed after his retirement. Not only this, the recovery order was passed by withdrawing the benefit, which was extended to the petitioner as on 01.01.2009 and the said benefit was withdrawn by the respondents while re-fixing his salary in the year 2017, which is more than five years and, therefore, the recovery by the impugned order was impermissible keeping in view the settled principle of law as noticed above.

Consequently, impugned orders dated 12.04.2017 (Annexure P-6) and dated 07.07.2017 (Annexure P-8) respectively, are set-aside. The recovery which has been ordered from the petitioner be refunded to him within a period of two months from the date of receipt of certified copy of this order.

Writ petition stands allowed in above terms.

May 21, 2019 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned? Yes
Whether reportable? Yes

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