

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

CWP-25670-2014

Date of decision: - 19.11.2019

Tara Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. M.K. Dogra, Advocate,
for the petitioner.

Ms. Sunint Kaur, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the action of the respondents in recovering an amount of ₹1,46,370/- from the retiral benefits of the petitioner, vide impugned order dated 14.06.2010 (Annexure P-2).

As per the averments made in the writ petition, petitioner was appointed as a Carpenter under respondent No.3 at the RSD Shahpur Kandi Township, Pathankot. The Government of Punjab revised the pay-scale of its employees in the year 1988 w.e.f. 01.01.1986 and upon the said revision, petitioner was granted the pay-scale of ₹1200-2100. The said pay-scale was extended to the petitioner and he was re-designated as

a Technician Grade-III keeping in view the pay-scale, which he was granted w.e.f. 01.01.1986. In the subsequent revision also, the revision commensurate to the pay-scale of ₹1200-2100, was extended to the petitioner.

In the year 2002, to be precise on 11.09.2002, respondents passed an order by which the benefit of the pay-scale of ₹1200-2100 was withdrawn from the petitioner on the ground that the same was wrongly extended to him and other similarly situated persons. The said action of the withdrawal of the pay-scale of ₹1200-2100 was challenged before this Court in CWP No.1067 of 2003. The said writ petition was disposed of by this Court on 27.03.2009, wherein, the action of the respondents in withdrawing the pay-scale of ₹1200-2100 was upheld. With regard to the recovery of the excess amount, which the petitioner and other similarly situated employees had withdrawn, was left to be decided by the respondents at their own level keeping in view the financial burden and the hardship, which was to be faced by the employees. The action of withdrawal of the pay-scale of ₹1200-2100 was upheld by the Hon'ble Supreme Court in the appeal preferred. After the action of the respondent-department of withdrawing the pay-scale of ₹1200-2100 was upheld up to the Hon'ble Supreme Court, respondents decided to effect the recovery of excess amount from the petitioner as well as the similarly situated employees. Before any recovery could be done from the petitioner, he attained the age of superannuation on 30.04.2009. After the petitioner superannuated, the respondents passed an order dated 14.06.2010 (Annexure P-2) for the recovery of ₹1,46,370/-. Similar orders were also

passed in the case of other colleagues of petitioner, from whom also the benefit of the pay-scale of ₹1200-2100 was withdrawn. The challenge in the present writ petition is to the order of the recovery on the ground that recovery cannot be done from a retired employee and further, there was no misrepresentation on behalf of the petitioner to secure the said pay-scale and as the decision to withdraw the pay-scale of ₹1200-2100 was of the respondents themselves, the excess amount, which has been paid to the petitioner, cannot be recovered.

Upon notice of motion, the respondents have filed the reply.

In the reply, the respondents have stated that once their action of withdrawing the pay-scale of ₹1200-2100 has been upheld up to the Hon'ble Supreme Court, petitioner cannot be allowed to retain the excess amount as the same is public money and excess amount paid under a mistaken belief can be recovered from the petitioner.

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

The question, which arises for the determination of this Court in the present writ petition is, whether a recovery of an excess amount after withdrawing the benefit can be done from a retired employee or not from his retiral benefits.

This question has been settled by the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, wherein, by the Hon'ble Supreme Court has given the guidelines as to under what circumstances, recovery cannot be done from the employees. The relevant part 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.”

A bare perusal of the above-said judgment would make it clear that the Hon'ble Supreme Court has held that the recovery cannot be effected from a retired employee or an employee, who is nearing to retirement.

In the present writ petition, impugned order dated 14.06.2010 (Annexure P-2) was not only passed after the superannuation of the petitioner, rather the order was passed after more than 1½ years of the retirement of the petitioner and therefore, the recovery which has been

done from the petitioner is contrary to the settled principles of law settled by the Hon'ble Supreme Court in **Rafiq Masih's case (supra)**.

Learned counsel for the respondents states that the judgment in **Rafiq Masih case (supra)** is not applicable in the present case as the recovery was done in the year 2010, whereas the judgment of the Hon'ble Supreme Court was passed in December, 2014 and therefore, the said judgment cannot have a retrospective effect.

The said question has also been considered by a Division Bench of this Court while deciding the **LPA No.2448 of 2016**, titled as '**State of Punjab and others Vs. Amrik Singh and others**', on 9.8.2018, wherein, it has been held that the judgment of the Hon'ble Supreme Court of India in **Rafiq Masih** case (supra) will have the retrospective effect. 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.”

Even otherwise, in the case of the similarly situated employees, from whom the recovery was being done on account of withdrawal of the pay-scale ₹1200-2100, this Court has already set aside the recovery. This Court while passing the order in **CWP No.18739 of**

2012 titled as “**Gurbax Singh Vs. State of Punjab and others**, decided on 04.12.2012, has categorically held that the recovery of an excess amount is not permissible and the amount so recovered should be refunded. The relevant paragraph of the judgment is as under: -

“There is no dispute as regards the fact that the present petitioner had served the respondent/authorities on the post of Welder and stood superannuated w.e.f. 31.10.2011. The petitioner would clearly fall within the exception as noticed by the Hon'ble Apex Court in the case of Chandi Prasad Uniyal (supra) and the benefit of pay scale of ₹1200-2100/- that has been granted to him while in service and that too not on account of any misrepresentation on his part could not have been recovered from him post retirement. The action of the respondent/authorities in having withheld an amount of ₹2,14,205/- out of the sanctioned amount of gratuity of ₹2,91,695/- without even passing a specific order to such effect is held to be bad in law.

Accordingly, the present writ petition is allowed. The order dated 5.3.2012 (Annexure P-3) to the extent of effecting recovery from the gratuity admissible to the petitioner is set aside and it is directed that a sum of ₹2,14,205/- which already stands recovered in terms of withholding the same from the gratuity payable to the petitioner be released in his favour within a period of one month from the date of receipt certified copy of this order. The petitioner is also held entitle to the permissible statutory rate of interest on the withheld amount of gratuity.”

Thereafter, this Court in CWP No.24230 of 2012 titled as 'Dharam Pal Vs. State of Punjab and others, decided on 10.01.2014, again by relying upon the order passed in Gurbax Singh's case (supra) set aside the recovery, which was being ordered from a similarly situated employee

as the petitioner herein. The relevant paragraph of the judgment is as under:-

“In the case in hand, pay of the petitioner was fixed in the scale of ₹1200-2100 from the date of his initial appointment for which the petitioner cannot be faulted with. No doubt, it is claimed that error was discovered in the year 2002, however, still thereafter the matter remained pending in the court and even after decision of the writ petition on 27.3.2009, no action was taken by the authorities either to re-fix the pay or recover the excess paid amount from the petitioner. The petitioner retired on 31.5.2012. The alleged excess paid amount was recovered from the gratuity payable to the petitioner. Considering the fact that the petitioner was working as a Carpenter, he cannot be said to be highly paid employee. In Gurbax Singh's case (supra), this court considered an identical issue pertaining to the Welder appointed in Ranjit Sagar Dam Project at the same time. Recovery of the alleged excess paid amount was made from the gratuity paid to him on the date of retirement on 31.10.2011, which was quashed by this court and it was directed that the amount already recovered be paid to him. Relevant part thereof is extracted below:

“The issue as regards recovery of financial benefit granted to an employee on account of bonafide mistake/wrong fixation is no longer res integra. A Full Bench decision of this Court in the case of **'Budh Ram and others v. State of Haryana and others', 2009(3) SCT 333** had clearly taken a view that if there be no fraud or misrepresentation attributed to an employee, financial benefit that had already been released in favour of such employee, cannot be recovered. Thereafter, such issue came up for consideration in a recent judgment of Hon'ble Apex Court in **Chandi Prasad Uniyal and others v. State of Uttarakhand and others, 2012(4) SCT 227.**

Their Lordships of the Supreme Court have held that even though no general principle of law has been laid down that only if there is misrepresentation or fraud on the part of the recipient of the money then such excess payment could be recovered, but at the same time had noticed certain exceptions in the nature of employees who already stood retired or were on the verge of retirement or belong to the lower hierarchy in the scheme of administration.

There is no dispute as regards the fact that the present petition had served the respondent/authorities on the post of Welder and stood superannuated w.e.f. 31.10.2011. The petitioner would clearly fall within the exception as noticed by the Hon'ble Apex Court in the case of Chandi Prasad Uniyal (supra) and the benefit of pay scale of ₹1200-2100/- that has been granted to him while in service and that too not on account of any misrepresentation on his part could not have been recovered from him post retirement. The action of the respondent/authorities in having withheld an amount of ₹2,14,205/- out of the sanctioned amount of gratuity of ₹2,91,695/- without even passing a specific order to such effect is held to be bad in law.”

For the reasons mentioned above, the writ petition is allowed. The action of the respondents in deducting ₹2,86,852/- from the gratuity payable to the petitioner is declared illegal. The respondents are directed to refund the aforesaid amount within a period of three months from the date of receipt of copy of the order.”

Counsel for the respondents is unable to dispute the said fact that the recovery in the case of similarly situated employees have already been set aside by this Court, which orders have already attained finality.

Keeping in view the above, the action of the respondents in recovering the amount of ₹1,46,370/- from the pensionary benefits of the petitioner is held to be contrary to the above settled principle of law and consequently, the order dated 14.06.2010 (Annexure P-2) is set aside and the respondents are directed to refund the amount recovered from the petitioner within a period of two months from the date of receipt of certified copy of this order.

Present writ petition is allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

November 19, 2019
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes