

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

CWP-25209 of 2016

Date of decision: 27.11.2019

Lekh Raj

.... Petitioner

versus

U.H.B.V.N. Limited and others

... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Munish Mittal, Advocate
for the petitioner.

Ms. Harmanpreet Kaur, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the grievance which is being raised by the petitioner is that after his retirement, recovery of sum of Rs.38,835/- has been effected vide order dated 15.09.2014 (Annexure P/1) from the pensionary benefits of the petitioner, which is against the settled principles of law.

As per the facts stated in the writ petition, the petitioner joined as a T-mate on 02.07.1976 on daily wage basis and his services were regularised as a T-mate on 28.08.1988 . From the post of T-mate, the petitioner was promoted as Assistant Lineman on 13.09.1991 and was further promoted to the post of lineman in the year 2007. Thereafter, he was further promoted to the post to AFM in the month of April, 2013, from which post, he ultimately retired on 30.06.2014. Prior to the retirement of the petitioner, the respondents refixed the salary of the petitioner by

withdrawing benefits i.e. step up of his pay, which benefit was extended to him in the year 2001. Though, refixation was done prior to the retirement of the petitioner, but actual recovery of the amount was effected by the respondents vide order dated 15.09.2014 (Annexure P/1) i.e after the retirement of the petitioner. The petitioner is challenging the said order of recovery but not the order of refixation of his salary.

Upon notice of motion, respondents have filed reply. In the reply, the respondent have defended their action of recovery on the ground that petitioner was not entitled for the benefit of step up of his pay by granting him benefit of ACP with one Raj Kumar, which benefit was extended to him on 01.12.2001 and on realising the said mistake, the benefit was withdrawn and as the petitioner was paid excess amount, which was already calculated prior to his retirement, the same was rightly recovered from his pensionary benefits.

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

The respondents have not disputed the facts that the benefit which was extended to the petitioner in December, 2001 was withdrawn after a period of fourteen years i.e. when the petitioner had retired in the year 2014. It is also not disputed that refixation of the salary of the petitioner was done in May, 2014 i.e. one month prior to his retirement and actual excess amount was recovered from the pensionary benefits of the petitioner. Further, there is nothing on record showing that the petitioner was given an opportunity of hearing before refixaton of his salary. As the said refixation is not under challenge in the present writ petition, thus, this Court is not

going into said the dispute. The only question which has been raised is that whether in view of the facts and circumstances of the present case recovery from the pensionary benefits of the petitioner is permissible to be done by the respondents.

Hon'ble 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, the recovery cannot be effected from an employee. Relevant part of the 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.

A bare perusal of Clauses (i), (ii) and (iii) would make it clear that recovery cannot be done from an employee working on Group-C or Group-D posts, and in the present case, the petitioner was working as AFM, which

is a Class-C post. Further, as per clause (ii), recovery cannot be done from a retired employee or an employee, who is nearing retirement . In the present case, the pay of the petitioner was refixed, one month prior to his retirement and recovery in pursuance to the said order was done after retirement and, therefore, the same is not permissible. Further, the benefit which was withdrawn from the petitioner was extended in the year 2001 and the same was withdrawn in the year 2014 i.e. after an expiry of fourteen years under which circumstance recovery is impermissible as per Clause (iii) of the judgement in **Rafiq Masih's case (supra)**.

The counsel for the respondents is not able to point out any reason as to how Clauses (i), (ii) and (iii) of the judgment in **Rafiq Masih's case (supra)** are not applicable to the case of the petitioner.

In view of the facts and circumstances of the present case, and also in view of the law laid down in **Rafiq Masih's case (supra)**, recovery which has been effected from the petitioner is impermissible and, hence, the same is held to be illegal and impugned order dated 15.09.2014 (Annexure P/1) is set aside.

Respondents are directed to refund the amount recovered from the petitioner in pursuance to impugned order dated 15.09.2014 (Annexure P/1) within a period of two months from the date of receipt of certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

27.11.2019
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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |