IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.26590 of 2015
Date of Decision: July 15, 2019.

Rajpal Singh .....Petitioner

versus

Union of India and others .....Respondents

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

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Present: None for the petitioner.

Mr.R.S.Bajaj. Advocate, for respondent No.3.

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G.S.Sandhawalia, J. (Oral)

[1] Petitioner has filed the writ petition under Articles 226/227 of the Constitution of India and challenges the order dated 12.12.2014 (Annexure P3) passed by respondent No.3, whereby a sum of Rs.1,23,993/- has been withheld on account of re-fixation of pay and sought to be recovered from the gratuity. The petitioner had retired earlier on 31.08.2012. The respondents have sought to justify the withholding on the ground that the petitioner had given an undertaking on 29.12.2009 to the effect that excess payment made to him would be refunded either by adjustment against future payments due to him or otherwise.

[2] Admittedly, pay revision in the pay scales has been done w.e.f. 31.12.2006 and the petitioner continued to withdraw the same till the date of his retirement. The claim of the respondents is that the petitioner had been paid the basic pay of Rs.1340/- as on 31.07.1987 whereas he should have been paid the basic pay of Rs.1305/-. On this ground, the recovery has been made after more than two years of his retirement.

[3] The case is squarely covered by the judgment of the Apex Court rendered in State of Punjab and others versus Rafiq Masih (White Washer) etc. (2014) 8 SCC 883, wherein benefit has been given to the retired employees being a separate class. The relevant portion of the same reads 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..."

[4] The petitioner thus falls within category (ii) in a case of hardship as such. The same reads as follows:-

> "(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.
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> (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."

[5] Merely on formal undertaking given in a prescribed format by the petitioner, the amount withheld has been sought to be justified. The petitioner has been withdrawing his pay since the year 1987 and at no point of time during his entire service career, respondents have chosen to correct his pay. The amount cannot be recovered from a retired employee in view of the above law laid down by the Apex Court, as advertently there was no concealment or fraud by the employee.

[6] Resultantly, the writ petition is allowed; the order dated 12.12.2014 (Annexure P-3) is quashed. The respondents shall refund the amount of Rs.1,23,993/- alongwith interest @8% per annum, to the petitioner within a period of two months from the date of receiving a certified copy of this order.

July 15, 2019 **(G.S.SANDHAWALIA)**
mohinder **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No