IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(263) **CWP-23302-2018**
Date of Decision: August 21, 2019

Ashok Kumar .. **Petitioner**

Versus

State of Punjab and others .. **Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. O.P. Gabba, Advocate, for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that after the retirement of the petitioner from service on 31.01.2017, the pay of the petitioner was re-fixed and upon re-fixation, a sum of Rs.1,16,762/- has been recovered from the gratuity on account of excess payment. The said action of recovery is under challenge before this Court in the present writ petition.

Learned counsel for the petitioner prays that a direction be issued to the respondents to refund the said amount of Rs.1,16,762/-, which has been recovered from the gratuity of the petitioner on account of excess payment as no recovery can be made from a retired employee.

Facts stated in the writ petition are that the petitioner was an employee of Government of Punjab in the Department of Irrigation working as Steno Typist. He joined on the said post on 11.06.1985 and kept on working on the said post till attaining the age of superannuation on 31.01.2017. After the petitioner retired, the case of the petitioner was sent to the Accountant General, Punjab for approving of the pensionary benefits, which the petitioner was entitled for after his retirement. Certain objections were raised by the office of Accountant General, Punjab with regard to the admisibility of the benefits under the ACP scheme and the directions were given to the Administrative Department to re-fix the salary of the petitioner. Keeping in view the directions given by the Accountant General, Punjab, vide letter dated 15.02.2017 (Annexure P-1), the salary of the petitioner was re-fixed on 23.02.2017 and after the refixation of the salary, it was found by the respondents that sum of Rs.1,16,762/- was paid in excess to the petitioner and the same is needed to be recovered. The said amount was recovered from the gratuity of the petitioner, which action of the respondents is under challenge in the present writ petition.

Upon notice of motion, the respondents have filed the reply and in the reply, respondents have admitted that the petitioner retired from service on 31.01.2017 and it is only, thereafter, keeping in view the objection taken by the office of Accountant General, Punjab, the salary of the petitioner was re-fixed and the excess amount was recovered from the gratuity of the petitioner. The relevant paragraphs of the reply is as under:-

> *" 2. That the petitioner retired from the service on 31.01.2017 and prior to his retirement, the office of respondent No.2 vide its Letter No.128, dated 03.01.2017 had sent the pension case of petitioner to the office of Accountant General (A&E), Punjab, Chandigarh (respondent No.3) well in time for processing the same. However, the office of the respondent No.3 vide Letter dated 15.02.2017 (Annexure P-1) showed its inability to process the pension case of petitioner on the ground that "as per Punjab Govt. orders, Grade pay of Rs.2400/- is admissible to Steno Typist from 01.01.2006 to 30.11.2011 and Rs.3200/- is admissible from 01.12.2011. Only*

increments are admissible in 04.09.2014 ACP Scheme. Pay of the official may be fixed accordingly" and returned the pension papers alongwith the service book of petitioner to the respondent No.2 for want of compliance with a request to resubmit the same duly complied with, so as to enable his office to finalize the pension case. A copy of the office Letter dated 15.02.2017 (Annexure P-1) was also forwarded to the petitioner for information.

3. That in compliance with the instructions issued vide office Letter dated 15.02.2017 (Annexure P-1) by respondent No.3, the respondent No.2 vide office order No.4580-82/15-E, dated 23.02.2017 refixed the salary of petitioner and this fact is itself duly mentioned in office order dated 02.05.2017 (Annexure P-2) passed by the respondent No.2, copy of which was also duly forwarded to the petitioner. After refixtion of salary, a sum of Rs.1,16,762/- was found to be recovered from the petitioner as recovery of pay fixation as per the detail mentioned in the office order dated 02.05.2017 (Annexure P-2) passed by the respondent No.2, on the basis of which, the said amount was recovered and the objection raised by the respondent No.3 in its office Letter (Annexure P-1) was removed and sanction was accorded for payment of Gratuity amount of Rs.7,10,066/- to the petitioner."

Learned counsel for the respondents states that the order passed by the Accountant General, Punjab was binding upon the Administrative Department and once the petitioner was paid excess amount, the same was liable to be recovered from the petitioner as the same is public money and upon notice of the mistake of payment of excess amount to the petitioner, the same was rectified. Counsel for the respondents has further argued that once the re-fixation is not challenged by the petitioner, recovery in pursuance to the re-fixation cannot be challenged and therefore, the writ petition is liable to be rejected.

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

It is an admitted case that the re-fixation of the salary has been done by the respondents after the retirement of the petitioner and that too only when an objection was raised qua the fixing of the salary by the office of Accountant General, Punjab. The question to be decided by this Court is as to whether, upon re-fixation of salary of an employee after retirement, any recovery can be done or not. The guidelines as to under what circumstances, the recovery cannot be done, have been laid down by the Hon'ble Supreme Court of India in ***State of Punjab and others vs. Rafiq Masih and others, (2015) 4 SCC 334.*** Various situations have been given under which, recovery cannot be done even if an excess amount has been paid to a particular employee. One of the ground which makes the recovery impermissible as per the said judgment is that no recovery can be done from any retired employee or an employee who is nearing his/her retirement. The relevant paragraph 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 employees, 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."

Learned counsel for the respondents is unable to dispute that the re-fixation of the salary of the petitioner was done after retirement and even the recovery has been done after the retirement. He has not been able to differentiate that the case of the petitioner in any way is not covered under Clause (i) of para 12 of the judgment where guidelines have been laid down by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, therefore, the case of the petitioner in respect of the recovery is covered by the said judgment.

The argument raised by learned counsel for the respondents is that once there is no challenge to the re-fixation, the recovery cannot be challenged. I am afraid that this argument cannot be accepted though, the respondents are well within their right to grant the petitioner the pensionary benefits on correct fixation of pay but excess amount upon re-fixation of pay cannot be recovered keeping in view the guidelines. Therefore, it is not necessary that an employee needs to challenge the re-fixation of pay so as to challenge the recovery of excess amount upon re-fixation of salary.

Therefore, the objection which is being raised by the respondents cannot be accepted and is rejected.

In view of the above, the writ petition is allowed. Respondents are directed to refund the amount of Rs.1,16,762/- within a period of two months from the receipt of certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

August 21, 2019
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Whether speaking/reasoned: Yes
Whether reportable: Yes