IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5159-2015
Date of decision: - 11.02.2019

Nafe Singh Nandal

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Dinesh Arora, Advocate,
for the petitioner.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance raised by the petitioner is that the amount which is being deducted from his pension after his retirement is bad and he is seeking a writ in the nature of mandamus for directions to the respondents to refund the amount of ₹12,432/- per month, which was being deducted from his pension alongwith interest.

The relevant facts, as mentioned in the writ petition are, that petitioner joined as a Junior Engineer on 27.02.1959 and was promoted as Sub-Divisional Officer on 23.12.1978 and ultimately retired on 31.03.1996. After the retirement, the pensionary benefits of the petitioner were released and his pension was fixed @ ₹5041/- per month starting from 01.04.1996.

Keeping in view the revision of the pay-scale, the pension was also enhanced and it is contended in the writ petition that in January, 2015, the petitioner was getting the pension of ₹28.368/- per month.

As per the averments made in the writ petition, starting from the month of July, 2015, the respondents started deducting an amount of ₹12,432/- per month from the pension of the petitioner. Further it is stated that petitioner did not knew the reason for recovering the said amount and hence, he filed the present writ petition seeking direction to the respondents to refund the amount deducted from his pension alongwith interest.

This Court issued notice of motion on 24.03.2015 and stayed the recovery.

In reply to the writ petition, the respondents have came out with the plea that after the petitioner was promoted as a SDO on 23.12.1978, he was granted a pay-scale of ₹4100-5300/-. At the time of retirement, the petitioner was drawing the basic pay of ₹4725/-. It has been submitted in the reply that as the pay-scale was revised in the year 1998 w.e.f. 01.01.1996, the pay of the petitioner was refixed in the pay-scale of ₹13500-17250. After the fixation of the pay in the said pay-scale, the department found that the petitioner was wrongly given the pay-scale of ₹4100-5300, which he was drawing at the time of his retirement, for the reason that the same was only available to the 20% of the Senior SDO working in the cadre. As the petitioner was not within the first 20%, thus he was not entitled for the pay-scale of ₹4100-5300, which he was enjoying at the time of retirement and therefore, his salary was refixed in the pay-scale of ₹3000-4500 at the time of his retirement. Keeping in view the said refixation, the petitioner became entitled for the revised pay-scale of ₹8000-13500 instead of ₹13500-17250 w.e.f. 01.01.1996. Due to the said refixation, which was done on 11.10.2002, the salary of the petitioner became less and consequently, even the pensionary benefit was to be revised on the basis of the said refixation, which was done on 11.10.2002.

As per the written statement, the pay of the petitioner was revised on 11.10.2002 and after refixation, at the time of his retirement, petitioner was found entitled for the basic pay of ₹11025/- instead of ₹12675/- and therefore, the recovery of ₹71,994/- was being sought from the petitioner. The relevant paragraph of the reply is as under: -

> "2. That the present writ petition is not maintainable at all as the petitioner had joined the department of answering respondent no.2 as J.E. on 27.02.1959 and he was promoted as SDO on 23.12.1978 and he retired on 31.03.1996. At the time of retirement the petitioner was drawing his pay in the pay scale of 4100-5300 (with basic pay Rs.4725/-). In the year 1998 these scales were revised w.e.f. 01.01.1996 and thus the pay of the petitioner was re-fixed in the pay scale 13500-17250. However subsequently it was found that the pay of the petitioner was wrogly fixed in the pay scale of 4100-5300 (revised to 8000-13500) as he did not fall in 20% cadre post, as (Annexure R-1). Hence vide order dated 11.10.2002 the pay of the petitioner was re-fixed in the pay scale 3000-4500 (revised 8000-13500) and thus accordingly the pay fixation statement was sent to Accounts Officer Hisar for verification and Account Officer Hisar has re-fixed the pay of petitioner by issuing office order no. 5368-73/PF dated 12.09.2006. The said order is attached herewith as (Annexure R-2).

It is not out of place to mention here that petitioner was duly served demand notice for recovery of pension vide no.467/PF dated 30.01.2012 but no reply was sent by the petitioner till date. The said notice is attached herewith as (Annexure R-3).

The service pension case was referred to Accountant General Haryana vide no.1749-50/PF dated 09.04.2012 and accordingly Accountant General Haryana revised the pension vide revised PPO 2/063579-5/3/P/12/15/37103 dated 23.5.2012 by reducing the pension from Rs.6165 to Rs.5406 and accordingly as per revised PPO issued by Accountant General, Haryana intimation in this regard has been given to SBI main Branch to recover the pension already paid excess to him and Bank started the recovery w.e.f. 01.06.2014. The said order is attached herewith as (Annexure R-4)."

Keeping in view the above, the respondents have defended the order of refixation of the salary/pension of the petitioner as well as the recovery, which was being done from the pension of the petitioner to the tune of ₹12,432 per month.

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

It is an admitted case that the petitioner retired on 31.03.1996. Further, it has been admitted by the respondents themselves that till the year 2002 i.e. approximately 6½ years, the petitioner kept on getting the pay-scale, which he was enjoying at the time his retirement and it was only after 6½ years of the retirement, the pay of the petitioner was revised by the respondents when they noticed their mistake while fixing his salary in the year 1996.

Not only this, the recovery notice was given to the petitioner in January, 2012 i.e. approximately 16 years after his retirement and the deductions were started in July, 2014 i.e. approximately 18 years after his retirement.

Counsel for the petitioner states that case of the petitioner is squarely covered in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, according to which, no recovery can be made from an employee, who has already retired or in respect of a refixation which was done approximately five years prior to the date when the pay was sought to be refixed. 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:-
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> (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."

From the above, it is made clear that case of the petitioner is squarely covered under Clause 12(ii) and (iii) of the said judgment, according to which, the recovery cannot be made from a retired employee or in case where the pay was sought to be refixed after a period of five years.

In the absence of any malafide or misrepresentation by the petitioner, he is entitled for the benefit of Clause 12(ii) and (iii). Further, in the present case, not only the pay was refixed unilaterally after the retirement, but the recovery has already been ordered after the retirement, which is impermissible as per the principle of law settled by the Hon'ble Apex Court in **Rafiq Masih's case (supra)** as well legal aspect.

Counsel for the respondents is unable to rebut the above-mentioned factual aspect as well as legal aspect.

It has been admitted by the respondents themselves in reply that the pay was refixed after a period of approximately 10 years of the retirement of the petitioner in the year 2006 and the recovery was being sought to be done in the year 2014.

If that be so, the recovery which was being done from the petitioner was contrary to the law as settled by the Hon'ble Apex Court in **Rafiq Masih's case (supra).**

In view of the above, the present writ petition is allowed. The recovery which is being done from the petitioner is held to be bad in view of the settled principle of law by the Hon'ble Apex Court in **Rafiq Masih's case (supra)** and the same is hereby set aside. Further, the amount so recovered from the petitioner already, shall be refunded back to the petitioner, within a period of two months from the date of receipt of certified copy of this order.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 11, 2019
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes