

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 242 of 2018 (O&M)

Date of Decision : 18.03.2019

Amita Renuka

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Ranjivan Singh, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the grievance which is being raised by the petitioner is only in respect to the recovery to the tune of ₹3,85,243/-, which has been done from the DCRG of the petitioner.

Learned counsel for the petitioner states that the said recovery has been done from the petitioner after her retirement, which is not only against the well settled law as settled by Hon'ble the Supreme Court in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334*, but also on the fact that the pay of the petitioner was revised by the respondents unilaterally without giving any show cause notice after the retirement keeping in view the objection which was raised by the Accountant General, Punjab.

The facts as mentioned in the writ petition are that the

petitioner was initially appointed as a Staff Nurse on 02.06.1981 by the respondents in the Department of Health and Family Welfare. After appointment, the petitioner came on deputation and remained with Chandigarh Administration from 06.10.1983 till 07.07.2013. On the said day, petitioner was promoted as a Nursing Sister and was transferred back to the State of Punjab. While working as a Nursing Sister, petitioner attained the age of superannuation. Thereafter, petitioner availed two years' extension period and ultimately retired on 31.12.2017. When petitioner was in service, her case was sent to the Accountant General, Punjab for fixation of her pensionary benefits. While processing the case of the petitioner, the Accountant General, Punjab issued a letter on 10.10.2017 to the respondent-Department raising certain objections, which objections are as under:-

- “1. AS PER ENTRY RECORD AT PAGE NO. 16 OF THE SERVICE BOOK SMT. AMITA RENUKA STAFF NURSE HAS ALREADY BEEN TAKEN 8 AND 16 YEARS INCREMENT AS ON 1.1.1996 AND 2.6.1997 ANOTHER RECORDED AT PAGE NO. 20 SHE HAS BEEN GRANTED 24 YEARS ACP ON 2.6.2005 AND HER PAY REVISED FROM 8375 TO 8650.*
- 2. IN CONTINUATION OF PARA NO. 01 THE REVISED PAY RECORDED FROM 1.1.2006 AT PAGE NO. 28 IS NOT IN ORDER, SHE WILL BE ENTITLED TO DIFFERENCE TO GRADE PAY RS. 200 AS ON 1.1.2016 ON COMPLETION OF 9 YEARS SERVICE AND DIFFERENCE OF RS. 400 ON COMPLETION OF 14 YEARS AS SHE HAS ALREADY BEEN GRANTED ACP INCREMENT EARLIER. THIS MAY BE LOOKED INTO.”*

Keeping in view the objections raised, the Department re-fixed

the salary of the petitioner vide letter dated 13.11.2017 and in the re-fixation, basic pay of the petitioner was reduced to 23910 instead of 25690 w.e.f. 1.1.2006. Consequent upon the re-fixation of the basic pay, the respondents calculated an amount of ₹3,85,243/- to be paid by the petitioner. Keeping in view the said letter, while granting the petitioner the benefits, the said amount was recovered from the DCRG of the petitioner, which action is under challenge in the present writ petition.

Learned counsel for the petitioner states that though the re-fixation of the salary of the petitioner was done without following due procedure, but in the present case, the petitioner only restricts her claim in respect of the recovery done from her and the petitioner is not challenging the re-fixation as done by the respondents vide their letter dated 13.11.2017.

In reply, the respondents have admitted that the pay of the petitioner was re-fixed keeping in view the Notification issued by the Government on 03.11.2006, according to which, certain emoluments, for which petitioner was not entitled but inadvertently were extended to her and, therefore, after the Accountant General, Punjab raised the objection, the pay of the petitioner was re-fixed and upon re-fixation, a recovery of an amount of ₹3,85,243/- has been ordered from the petitioner. The relevant paragraph of the reply is as under:-

“2. That the Government vide notification No. 7/60/2006-5PPI/15963 dated 03.11.2006 has modified the order of Assured Career Progression (ACP) (4-9-14) with effect from 01.01.2006/01.11.2006 and reduced the basic pay of the petitioner from Rs. 25,690/- to Rs. 23,910/- as per the direction of the Accountant General Punjab and the same as under:-

Date	Pay Scale	Pay earlier Re-fixed	Pay now Re-fixed	Remarks
01.01.2006	10300 - 34800+3600	16690+3600 =20290	16610+3600 =20210	Pay refixed in new pay scales
01.11.2006	10300 - 34800+3800	17300+3800 =21100	16610+3800 =20410	Placement after 9 years services
01.11.2006	10300 - 34800+4200	17940+4200 =22140	16610+4200 =20810	Placement after 14 years services
01.01.2007	10300 - 34800+4200	18610+4200 =22810	17240+4200 =21440	Annual Increment
01.01.2008	10300 - 34800+4200	19300+4200 =23500	17890+4200 =22090	Annual Increment
01.01.2009	10300 - 34800+4200	20010+4200 =24210	18560+4200 =22760	Annual Increment
01.01.2010	10300 - 34800+4200	20740+4200 =24940	19250+4200 =23450	Annual Increment
01.01.2011	10300 - 34800+4200	21490+4200 =25690	19960+4200 =24160	Annual Increment
01.09.2011	10300 - 34800+4600	21490+4600 =26090	19960+4600 =24560	Revised pay scale w.e.f. 01.09.2011
01.01.2012	10300 - 34800+4600	22280+4600 =26880	20700+4600 =25300	Annual Increment
01.01.2013	10300 - 34800+4600	23090+4600 =27690	21460+4600 =26060	Annual Increment
08.07.2013	10300 - 34800+4800	23090+4800 =27890	21460+4800 =26260	Promoted as Nursing Sister
01.01.2014	10300 - 34800+4800	23930+4800 =28730	22250+4800 =27050	Increment of Promotion
01.01.2014	10300 - 34800+4800	24800+4800 =29600	23070+4800 =27870	Annual Increment
01.01.2015	10300 - 34800+4800	25690+4800 =30490	23910+4800 =28710	Annual Increment

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 benefit was extended to the petitioner in the year 2006 while fixing her pay after the revised Rules came into effect w.e.f. 01.01.2006. Petitioner continued getting the said pay till

her retirement. It is only at the fag end of her career, the respondents on the asking of the Accountant General, Punjab re-fixed the salary of the petitioner and found that there has to be recovery to the tune of ₹3,85,243/- which is to be done from the pensionary benefits of the petitioner. Nothing in the reply shows that there is any misrepresentation on behalf of the petitioner or the petitioner was in any way connected for the grant of relief, which according to the respondents was wrongly granted to the petitioner.

As per the judgment of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(supra)***, an employee, who has retired or is nearing his/her retirement, no recovery can be effected from the said employee. Not only this, Hon'ble the Supreme Court has held that where the relief, which was granted to an employee was more than five years old, the recovery cannot be made. 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 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.”

In the present case, the relief was granted to the petitioner while fixing her salary w.e.f. 01.01.2006 and the recovery was being ordered in the year 2017, which is more than five years. Therefore, the case of the petitioner is squarely covered by the judgment rendered in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.(supra)*** in respect of the recovery to be done from the petitioner.

While issuing notice of motion, this Court had already stayed the operation of the order by which the recovery was ordered. This Court has been informed that though no recovery has been effected but the total amount of gratuity amounting to ₹10 lacs has been withheld by the respondents.

Under these circumstances, a direction is given to the respondents to release the gratuity i.e. ₹10 lacs without any deduction within a period of two months from the receipt of the copy of this order.

Writ petition stands allowed in above terms.

March 18, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes