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

**CWP-8505-2016 (O&M)
Date of Decision: 28.03.2019**

Surinder Nath Panchayat Secretary (Retd.) Panchayat Samiti Sanour

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Baldev S.Sidhu, Advocate
for the petitioner.

Mr. Mehardeep Singh, Addl. AG, Punjab.

Mr. M.K.Singla, Advocate and
Ms. Shikha Singh, Advocate
for respondent No.2.

HARSIMRAN SINGH SETHI, J.(ORAL)

The grievance of the petitioner in this writ petition is that after his retirement, the respondents have deducted an amount of ₹1,60,651/- out of his retiral benefits, which is contrary to the law laid down by Hon'ble Supreme Court in case of *State of Punjab and others etc Versus Rafiq Masih (White Washer) etc; 2015(4) SCC 334*.

The facts as stated in the writ petition are that the petitioner was appointed as a Panchayat Secretary on 29.08.1974. On attaining the age of superannuation, he retired from the service on 30.11.2014. After retirement, the case of the petitioner was sent to the Department of Rural Development

and Panchayat, Punjab for approving his pensionary benefits and while making the payment of retiral benefits, respondents deducted an amount of ₹1,60,651/- vide order dated 28.04.2014 (Annexure P-4 with the writ petition).

Learned counsel for the petitioner contends that the said recovery has been done in an illegal and arbitrary manner i.e. without following any process of law and no show cause notice, whatsoever was given to the petitioner before effecting the said recovery. Further, an argument has been raised that no reason has been given as to on what account the said recovery has been done by the respondents.

Upon notice of motion, respondents have filed their reply. In the said reply, the respondents have stated that one increment was wrongly given to the petitioner w.e.f. 01.09.1994. After the retirement of the petitioner, at the time of preparing the retiral benefits, the said fact came to the notice of the Department and by withdrawing the said increment, the pay of the petitioner was re-fixed and an amount of ₹1,60,651/- was calculated to be recovered from the amount of the gratuity.

Learned counsel for the respondents further states that after the retirement, the petitioner had given an undertaking that in case, any excess amount is paid to him, the same will be refunded by the petitioner.

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

In the present case, it is an admitted fact that there was no order of recovery passed till the petitioner retired from service on 30.04.2014 (wrongly typed as the endorsement is of as 30.04.2015 and the order was passed in reference to a letter written by office of Executive Officer

Panchayat Samiti Sanour at Patiala on 08.04.2015). No process of observing the rule of natural justice was followed by the respondents while passing the said order as the same was passed by respondent No.2 without giving any opportunity of hearing. Further, it is settled principle of law settled by the Hon'ble Supreme Court that no recovery can be made from the employees belonging to the Group 'C' and 'D'. The petitioner belongs to Group 'C' and on the date of recovery, the petitioner already stood retired. Even in the case of personnel who were nearing to the retirement, no recovery can be done as per the orders passed by the Hon'ble Supreme Court in ***Rafiq Masih's Case (supra)***. The relevant 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.”

Case of the petitioner is not only covered under Clause (i) of paragraph 12 reproduced above but also as per para 12(iii), a benefit which has been extended 5 years prior from the date of recovery, the same cannot be withdrawn and no recovery can be done in pursuance to the withdrawal of the said benefit. In the present writ petition, the petitioner retired in the year 2014 and the benefit of increment was granted in September, 1994 i.e. 20 years prior to the date of withdrawal of the said benefit. Therefore, the case of the petitioner is also covered in Clause (iii) of paragraph 12 of the judgment of the Hon'ble Supreme Court in ***Rafiq Masih's Case (supra)***.

In respect of the objections taken by the respondent that the petitioner had given undertaking that in case, any amount is paid in excess, the petitioner will refund the same. The said affidavit was given in November, 2014. The said affidavit was not given when the benefit of increment was given in November, 1994. Respondents have not paid any excess amount to the petitioner on his retirement in 2014. The excess amount has been calculated on the basis of benefit extended to the petitioner in the year 1994, therefore, the said undertaking cannot come to rescue of the respondents in respect of recovery which is being done by withdrawing

a benefit extended by the petitioner in the year 1994.

In view of the above, as the order (Annexure P-4) is passed against the settled principle of law and is hereby set aside. Respondents are directed to refund the amount of recovery amounting to ₹1,60,651/- to the petitioner within a period of two months from the receipt of the copy of this order.

Disposed of.

28th March, 2019
shabha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes