IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2967 of 2017
Date of Decision : 09.01.2019

Gurmail Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

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Harsimran Singh Sethi, J.(Oral)

1. In the present writ petition, the grievance which has been raised by the petitioner is qua the re-fixation of his pay after his retirement.

2. The petitioner retired from service on 30.09.2016 whereas his pay has been re-fixed vide order dated 19.10.2016 (Annexure P-6) keeping in view an objection raised by the Accountant General, Punjab. On account of re-fixation, a sum of ₹2,34,451/- has been recovered from the pensionary benefits of the petitioner, which is clear from order dated 12.01.2017 (Annexure P-9).

3. The facts leading to the filing of the present writ petition are as under :-

3(i) The petitioner joined as a Junior Engineer in the Irrigation Department on 07.03.1980 and was granted Ist proficiency step up after completion of 16/24 years of service on 19.12.2003 w.e.f. 07.06.1996.

Thereafter, as the petitioner continued working as a Junior Engineer, the petitioner was granted second proficiency step up on completion of 24 years of service w.e.f. 07.06.2004. Ultimately, on 08.06.2013 petitioner was promoted as a Sub Divisional Engineer from which post he retired on 30.09.2016.

4. After the case was sent for approval of the retiral benefits for which the petitioner was entitled for on his superannuation, the Accountant General, Punjab raised objection with regard to the grant of ACP after 24 years of service which was granted to the petitioner on 07.06.2004. Keeping in view the said objection, the respondents passed an order on 19.10.2016 (Annexure P-6) re-fixing the salary of the petitioner. After the re-fixation, it was found that the petitioner has been paid a sum of ₹2,34,451/- more than what he was entitled for and orders were passed for recovery of the same. On 12.01.2017, while fixing the pensionary benefits, it was ordered that an amount of ₹2,34,451/- should be withheld/deducted on account of recovery from the petitioner.

5. Learned counsel for the petitioner contends that the re-fixation of his salary and recovery has been done by the respondents unilaterally without giving an opportunity of hearing to the petitioner. No show cause notice was served upon the petitioner before effecting the recovery. Further, even otherwise the pay of the retired employee should not have been re-fixed much less initiation of the recovery proceedings on account of such re-fixation and, therefore, as per the law laid down by Hon'ble the Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334***, the respondents cannot make recovery on re-fixation of salary.

6. Learned counsel for the petitioner at this stage states that the petitioner confines his prayer to the recovery of ₹2,34,451/- only and gives up his claim for re-fixation of his salary as done by the respondents vide order dated 19.10.2016 (Annexure P-6).

7. On the other hand, learned counsel for the respondents states that the said re-fixation has been done on the asking of the Accountant General, Punjab, who had raised objection when the department submitted the case of the petitioner for approval of the pensionary benefits. It is only after the said objection was raised, the re-fixation was done and the recovery was effected from the pensionary benefits of the petitioner and, therefore, once the petitioner was not entitled for the benefit of second proficiency step up after 24 years of service in the year 2004, the said benefit was rightly withdrawn.

8. I have heard learned counsel for the parties and have gone through the record.

9. It is an admitted case that the respondents fixed the salary of the petitioner after granting him second proficiency step up after completing 24 years of service in June, 2004. The petitioner continued getting the said salary till his retirement in September, 2016 i.e. for a period of more than 12 years. There was no misrepresentation on the part of the petitioner at any stage and grant of the said benefit was only attributable to the respondents.

10. Further, as per the settled proposition of law, no recovery could have been made from the petitioner after his retirement. In the present case, not only the pay was re-fixed after the retirement but the recovery was also effected after the retirement from his pensionary benefits. As per the judgment of Hon'ble the Supreme Court in ***State of Punjab and others Vs.***

Rafiq Masih' case (supra), no recovery can be ordered after the retirement and further no action could have been taken in respect of the fixation which took place more than five years prior to the 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 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."*

11. In view of the above, effecting of the recovery from the petitioner is held to be bad in law. The writ petition is allowed to the said extent. The respondents are directed to release the amount of ₹2,34,451/- which was withheld from the pensionary benefits of the petitioner. The said

amount be released to the petitioner within a period of one month from the date of receipt of certified copy of this order.

The writ petition is partly allowed.

January 09, 2019 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*