IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5186 of 2018
DATE OF DECISION:30.01.2019

Gurwaryam Singh Sandhu

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.P. Kaushal, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the challenge is to the order dated 19.01.2016 (Annexure P-7) vide which while preparing the case for the pension and other retiral benefits, respondent No.2 wrote that a sum of ₹1,53,477/- is to be adjusted in view of the recovery ordered against the petitioner as calculated by the respondents vide order dated 07.12.2015.

As per the averments made in the writ petition, the petitioner retired as Sub Division Officer on 31.10.2015 on attaining the age of superannuation. It is averred in the petition that at the time of retirement, there were no proceedings pending against the petitioner and there was no recovery due from the petitioner.

After the retirement, the case of the petitioner was sent to the Account General, Punjab for approving the case for the grant of pension. Counsel for the petitioner has submitted that while going through the pension case, an objection was raised by respondent No.2 in respect of the grant of a step up given to the petitioner after 24 years of service, which was allowed to the petitioner on 30.03.2003. Keeping in view the said objection, the counsel for the petitioner states that without issuing any show cause notice, the respondents refixed the salary of the petitioner after withdrawing the said benefit vide order dated 07.12.2015.

The pay of the petitioner was refixed by the said order and it was found that the sum of ₹1,53,477/- needs to be recovered from the petitioner on account of excess payment as according to the respondents, the benefit of proficiency step up granted to the petitioner after 24 years of service on 30.03.2003 was wrong.

Keeping in view the said refixation and recovery, the pay of the petitioner was reduced and refixed and it was mentioned in the order passed by respondent No.2 that a sum of ₹1,53,477/- should be adjusted while making the payment of the retiral benefits. This order is under challenge in the present writ petition.

In reply, the respondents have defended the refixation of the salary. The relevant para stating that the Accountant General, Punjab did not approve the pension case and raised the objection and keeping in view the objection raised by the Accountant General, Punjab, the pension of the petitioner was refixed and recovery was found against the petitioner. The relevant portion of the reply is as under:

"3. That it is relevant to mention here that the office of

Accountant General Punjab at Chandigarh vide its letter dated 20.10.2015 expressed its inability to process the pension case of the petitioner due to certain shortcomings in the service record of the petitioner. It was found that proficiency step up after 24 years of service was allowed to the petitioner on 30.03.2003, it is relevant to mention here that as per Punjab Government letter dated 03.06.2005, Proficiency step up after 24 years of service to the Junior Engineer is admissible only up to 27.06.2000 not after that. In case of the petitioner, the Proficiency step up after 24 years of service was allowed on 30.03.2003 i.e. after 27.06.2000, hence, in case of petitioner, this benefit of step up after 24 years of service was wrongly given to the petitioner. It is also found that in case of petitioner grade pay of Rs.4800/- was admissible instead of Rs.5000/- which was given to the petitioner w.e.f. 01.01.2006. Copy of letter dated 20.10.2015 is annexed as Annexure R-4/1.

4. That in response the abovesaid letter dated 20.10.2015 (Annexure R-4/1), the respondent No.4 resubmitted the case of the petitioner to the office of Accountant General, Punjab, Chandigarh/respondent No.2 after making necessary compliance to the objections raised by the respondent No.2. The answering respondent recalculated the pay of the petitioner by withdrawing 24 years Proficiency step up wrongly given to the petitioner w.e.f. 30.03.2003 and by reducing grade pay from Rs.5000/- to Rs.4800/- w.e.f. 01.01.2006. After calculating all the amounts that were wrongly paid to the petitioner, the recovery of Rs.1,53,477/- was found to be due against the petitioner. The copy of letter dated 07.12.2015 along with recovery statement is annexed as **Annexure R-4/2**."

It has been admitted by the respondents that before refixing the salary of the petitioner, no opportunity was given and same was done unilaterally.

Counsel for the petitioner states that at this stage, the petitioner is not challenging the refixation as done by the respondents vide order dated 07.12.2015 and petitioner restricts his claim to the recovery only, which has been made from the pensionary benefits of the petitioner amounting to ₹1,53,477/-.

I have heard the counsel for the parties and have gone through the record of the case.

A bare perusal of the facts narrated hereinbefore would show that the recovery has been ordered by refixing the salary of the petitioner. The said refixation has been done after the petitioner superannuated on 31.10.2015. The refixation has been done on the ground that an objection was raised by the Account General, Punjab about the benefit which was granted to the petitioner 12 years prior to the date of retirement. It is an admitted case that there is no mis-representation on behalf of the petitioner to seek the said benefit. The said benefit was granted by the respondents to the petitioner on their own by interpreting the instructions available at the said point of time. The case of the petitioner in respect of recovery is covered by the judgment of Hon'ble Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334**. The relevant portion of the 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."

As per clause 2 of the directions given by the Hon'ble Apex Court, no recovery can be made from an employee, who is nearing his/her retirement or has already retired. In the present case, the petitioner had already retired and even the refixation was done after the retirement of the petitioner. Therefore, the recovery of an amount of ₹1,53,477/- is contrary to the law laid down by the Hon'ble Apex Court and the said action is accordingly set aside.

Respondents are directed to refund the said amount of ₹1,53,477/- to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms.

January 30, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No