

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

**CWP NO. 9274 OF 2018
DATE OF DECISION : 23.05.2019**

Kulvir Singh

...Petitioner

versus

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

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

Mr. P. S. Sidhu, Advocate,
for respondents No.1 to 3.

Mr. S. K. Arya, Advocate,
for respondent No.4.

ARUN MONGA, J. (ORAL)

1. On conjoint reading of the pleadings, the conceded position that emerges is that the case of petitioner is covered by the letter/Policy dated 03.04.2008 (Annexure P-4). The same envisages that in the case of a re-employed pensioner, if pay is fixed at a higher stage because of advance increments and no protection of the last pay drawn is being given, the pay should be treated as fixed at a minimum only for the purposes of ignoring the entire pension and allowing Dearness Relief on pension. It has further been clarified therein that for availing the said benefit, Ex-Servicemen ought to have retired from a post below commissioned officer rank before attaining the age of 55 years.

2. The petitioner admittedly was less than 55 years at the time of his retirement and retired from the post of Havaladar i.e from the non-commissioned officer rank.

3. Without delving deep into the matter, I am of the view that the impugned order dated 28.09.2017 (Annexure P-6) does not stand judicial scrutiny and is not tenable.

4. Even otherwise, stand of the respondents that the petitioner did not inform them with regard to his re-employment, flies in the face of letter dated 18.05.2017 (Annexure R-1), which itself states that when he visited the office of Defence Accoounts Department, DPDO, Hoshiarpur on 08.05.2017 he had disclosed that he had been re-employed in State Bank of India since 25.09.2013. Further more, the current employer/State Bank of India vide its letter dated 13.09.2017 (Annexure P-5) informed the Defence Accounts Department, DPDO, Hoshiarpur, that no extra allowances were being paid to the petitioner, apart from his salary. On perusal of the letters, ibid, it is of no significance whether the petitioner disclosed the information of his re-employment to the Defence Accounts Department, DPDO, particularly in view of the applicability of Policy dated 13.09.2017 (Annexure P-4).

5. The argument of learned counsel for the respondents that petitioner had given an undertaking and therefore, his case is not covered by the judgment rendered by Hon'ble Supreme Court in case titled as "***State of Punjab and others v. Rafiq***

Masih and others” 2015 (4) SCC 334, is also not tenable since no such undertaking in any case was required to be given by the petitioner in view of the letter/Policy dated 03.04.2008 (Annexure P-4).

6. In view of my above discussion and the reasoning contained therein, the writ petition is allowed. The impugned order dated 28.09.2017 (Annexure P-6) is set-aside. The recovery already effected pursuant to the impugned order be refunded to the petitioner within a period of 30 days from the date of receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

MAY 23, 2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No