

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5475 of 2016
DATE OF DECISION:11.07.2019

Tarsem Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek Chauhan, Advocate for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

Though in the present writ petition, the petitioner is challenging the order of refixation of his pay which has been done vide letter dated 19.05.2019, but at the time of arguments, counsel for the petitioner restricts his claim only with regard to the recovery, which was made from the petitioner on account of the said refixation. He argues that the said recovery was bad in law keeping in view the settled principles of law.

Counsel for the petitioner admits that during the pendency of the writ petition, though the recovered amount of ₹1,57,254/- has been refunded but the petitioner is entitled for the interest on the

said amount as the said amount could not be used by the petitioner for the period of more than about 1-1/2 years after his retirement.

The facts as mentioned in the writ petition are that the petitioner was appointed as Panchayat Secretary on 14.04.1977 on adhoc basis and his services were regularised on 26.11.1982 and, thereafter, he was promoted as Panchayat Officer on 17.10.2012. The petitioner continued working with the respondent when on attaining the age of superannuation, the petitioner retired from service on 28.02.2015. After the retirement of the petitioner, the respondents refixed his salary vide memo dated 30.04.2015. The said refixation was done by the respondents on the ground that the petitioner was given the benefit of proficiency step up after taking into consideration the adhoc service, which was contrary to the settled principles of law.

Upon refixation, it was found that the petitioner has been paid an excess amount of ₹98,159/-. Apart from the abovesaid amount of ₹98,159/-, some other amounts were also added in the recovery on the ground that the another payments amounting to ₹29,282, ₹12,960/-, ₹9,571/- and ₹7,282/- were paid wrongly to the petitioner and total amount to be recovered from the petitioner was assessed @ ₹1,57,254/-.

While making the payment of retiral benefits, the respondents deducted the said amount from the retiral benefits of the petitioner.

The challenge in the present writ petition is to the order of refixation of the salary of the petitioner by the respondents vide

order dated 30.04.2015 and also recovery/deductions of the amount of ₹1,57,254/-. As mentioned earlier, the petitioner is not pressing the petition against the order of refixation of his salary as stated by the counsel for the petitioner.

Upon notice of motion, the respondents have filed the reply and in the reply, justification has been given for recovering the amount of ₹1,57,254/- but in para 3, it has been stated that the amount so recovered, has been refunded back to the petitioner. The relevant averments made in para 3 of the reply is as under:

“3. That it is submitted that with regard to the amounts recovered from the petitioner, the same have already been refunded to the petitioner. The total amount of recovery made from the petitioner comes to Rs.1,57,254/- (98159+29,282+12,960+9571+7282). The same has been refunded vide cheque No.013171 dated 19.07.2016 for an amount of Rs.1,07,730/-. Copy of order and Cheque already attached as Annexure R-1 and R-2. Further an amount of Rs.49,524/- has been paid to the petitioner on 25.07.2016. A copy of the order and receipt given by the petitioner in this regard is attached herewith as Annexure R-3 and Annexure R-4.”

Counsel for the respondents fairly states that though in the reply, the date of the refund of the amount of ₹49,524/- has been written as 25.07.2016 but the same was 25.05.2017, which is clear from the receipt given by the petitioner i.e Annexure R-3 dated 25.05.2017.

Counsel for the petitioner states that though the amount was recovered from the petitioner has been refunded back but the same has been refunded back only on July, 2016/May, 2017 and the

petitioner has not been able to use the said amount after his retirement. The recovery which was being done by the respondents was contrary to the law, which was realized by the respondents themselves and that is why the recovered amount was refunded. Therefore, the petitioner will be entitled for interest on the said amount.

Counsel for the respondents on the other hand objects to the prayer of the petitioner for grant of interest on the ground that the petitioner was not entitled to receive the said excess amount as the same was paid contrary to the settled principles of law by giving him the proficiency step up by counting the adhoc service, which could have been done and, therefore, paying the interest will give premium to the petitioner as he has already been allowed to retain the excess amount by the respondents.

I have heard the counsel for the parties.

It is settled principles of law that in case an employee gets excess amount having knowledge that he is being paid excess, the respondents are well within their jurisdiction to recover the same but where the respondents are correcting their action for which the petitioner cannot be held liable in any manner, the recovery cannot be effected. In the present case there is no role which petitioner played in fixing the salary after grant of proficiency step up. Respondents themselves fixed the salary by granting the benefit of proficiency step up.

Furthermore, Hon'ble Supreme Court of India in the latest

Washer) etc., 2015(4) SCC 334 has given the guidelines that no recovery can be effected from the employee after his retirement. The relevant portion of the judgment of the Hon'ble Supreme Court of India 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.”

Not only this, this Court while deciding **J S Cheema Vs. State of Haryana and others, 2014(13) RCR (Civil) 355** also held that once the amount has been retained, the employee will become entitled for the grant of interest. The relevant para of the said order is as under:

“ The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

From the above reproduced settled principles of law, it is clear that the respondents could not have effected the recovery as the petitioner was not responsible in any manner for the payment of the said excess amount. The refund of the said money by the respondents themselves, clearly admits the fact that the recovery was done against the settled principles of law and it is further clear that the said amount remained with the respondents from 01.03.2015 till 19.07.2016/25.05.2017. Hence, the petitioner is held entitled for interest on the said amount @9% per annum from the date the said amount became due till the actual disbursement of the same. Let the interest be calculated within a period of two months from the date of receipt of a certified copy of this order and the actual payment of the calculated amount be released to him within a period of one month

thereafter.

The writ petition stands allowed in the above terms.

At this stage, counsel for the petitioner states that the petitioner has another grievance that he has not been paid the benefits of 33 years of service though the petitioner rendered 37 years of service. He seeks liberty to approach the respondents by filing appropriate representation claiming the said benefit from the respondents.

Counsel for the respondents states that in case any representation is filed, the same will be considered and decided within three months of the filing of the same by passing appropriate speaking order.

July 11, 2019
jt

(HARSIMRAN SINGH SETHI)
JUDGE

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