

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14200 of 2017

Date of decision: 18.07.2019

William Masih

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Arya, Advocate
for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the challenge is to order dated 15.03.2017 (Annexure P/1) by which the pay of the petitioner has been refixed w.e.f. 1.1.2006. The said order has been passed on 15.3.2017 and keeping in view the re-fixed salary, recovery has been done from the petitioner from his retiral benefits amounting to Rs.3,45,157/-. At the time of hearing, counsel for the petitioner very fairly states that the petitioner is not challenging refixation of his salary but only the recovery which has been effected from the petitioner out of his retiral benefits.

As per the facts mentioned in the writ petition, the petitioner joined as Constable in the Punjab Police on 18.12.1979 and ultimately retired from the post of Inspector on 30.4.2017. One month before the petitioner was to superannuate, the respondents passed an order refixing his salary w.e.f. 1.1.2006 and the said refixation has been done on the ground

that pay of the petitioner was wrongly refixed upon refixation of the pay scale, which was effected from 1.1.2006 and, therefore, the pay of the petitioner needed to be refixed. An order refixing the salary of the petitioner w.e.f. 1.1.2006 was passed by the respondents on 15.3.2017. In pursuance to the order of refixation, the respondents found that a sum of Rs.3,45,157/- was paid in excess to the petitioner, which needs to be recovered. After the petitioner superannuated on 30.4.2017, respondents have recovered the said amount from his pensionary benefits. A sum of Rs.20,000/- had been recovered in the month of March, 2017 i.e. when the pay of the petitioner was refixed and rest of the amount out of total Rs.3,45,157/- was recovered from the pensionary benefits.

The challenge in the writ petition by the petitioner is to the order of recovery by the respondents on the ground that after retirement, no recovery could be effected from the petitioner, keeping in view the settled principle of law laid down by Hon'ble Supreme Court **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. 2015(1) S.C.T. 195.**

Upon notice of motion, the averments made in the writ petition have been admitted. Respondents have justified the refixation by stating that pay of the petitioner on revision of the pay scale was wrongly fixed, which mistake has been rectified and further upon rectification of the mistake, the excess amount, which was paid to the petitioner, has rightly been recovered as the same was public money and nobody can be allowed to retain the excess amount beyond his/her entitlement.

I have heard learned counsel for the parties and have gone through the records with their able assistance.

In the present writ petition, after retirement of the petitioner, the order of refixation of his salary was passed about one and a half month before he was to superannuate and the order, which was being rectified by the respondents at the time of superannuation was passed in the year 2006, which is approximately 11 years after the pay was fixed by respondents.

The argument which has been raised on behalf of the petitioner that no recovery can be done from an employee who is nearing his retirement or has already retired is duly supported by settled principle of law laid by Hon'ble Supreme Court of India in *State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. 2015(1) S.C.T. 195.* The guidelines of Hon'ble Supreme Court, as to under what circumstances recovery can be done held as under:-

“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 situation, 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

through 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.

Counsel for the respondents has not been able to advance any argument as to how the judgment in Rafiq Masih (supra) does not cover the case of the petitioner in respect of the recovery of the amount.

As the recovery was being done from the petitioner after his retirement, which is not permissible as per the settled law and, therefore, the recovery of Rs.3,45,157/- done from the pensionary benefits of the petitioner is held to be impermissible and is consequently set aside.

Counsel for the respondents states that only a sum of Rs.20,000/- has been recovered out of the total amount of recovery. Let amount of Rs.20,000/- which has been recovered from the petitioner be refunded to him within a period of one month from the date of receipt of copy of this order as the said amount of Rs.20,000 has been recovered out of the total amount of Rs.3,45,157/- which has already been held to be bad.

The writ petition stands allowed in those terms.

(HARSIMRAN SINGH SETHI)
JUDGE

18.07.2019
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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |