

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10775-2016

Date of decision: - 17.01.2020

Sukhdev Raj

....Petitioner

Versus

Pepsu Road Transport Corporation Patiala and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Rohit Sapehiya, Advocate
and Mr. R.S. Chauhan, Advocate,
for the petitioner.

Mr. Kamal Kumar, Advocate
for Mr. Nitin Kaushal, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised is that after the retirement of the petitioner, his pay has been refixed and excess amount, upon the refixation of the salary amounting to ₹75,020/- has been recovered from his pensionary benefits, which is contrary to the settled principle of law.

As per the averments made in the writ petition, petitioner joined the Punjab Road Transport Corporation on 01.07.1980 as a Conductor. He continued working as such till 2009 when he was promoted as a Sub-Inspector. Thereafter, petitioner was promoted as a

Inspector in the year 2012. While working on the said post, he retired from service on attaining the age of superannuation on 30.04.2014. After the petitioner retired from service, his case was sent to the Accountant General, Punjab for fixation of the pensionary benefits and also for the release of the pension. It is the case of the petitioner that vide order dated 29.10.2014 (Annexure P-1), a sum of ₹75,020/- has been ordered to be recovered on the ground that pay of the petitioner has been refixed and the excess amount of ₹75,020/- has been recovered from the gratuity of the petitioner. The said order of recovery of excess amount is under challenge in the present writ petition.

Upon notice of motion, respondents have filed a short reply, in which, it has been stated that after the petitioner retired on 30.04.2014 and keeping in view an audit objection, the pay of the petitioner was refixed on 29.10.2014 and as the salary of the petitioner was wrongly fixed w.e.f. 01.01.1986, the same was refixed. Upon refixation of salary w.e.f. 01.01.1986, it was found that the petitioner has been paid the excess amount of ₹75,020/-, which has been rightly deducted from the gratuity of the petitioner.

The question of law, which has been raised in the writ petition, is whether after the retirement of the petitioner, the respondents could have recovered the excess amount upon refixation of his salary.

This question of law is no longer *res-integra*. The Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334** has laid down the guidelines as under what circumstances the recovery cannot be effected from the employees.

The relevant part 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.”

A bare perusal of the above reproduction shows that as per Clause (i) no recovery can be ordered from a retired employee.

In the present case, pay of the petitioner has been refixed after his retirement. Petitioner retired on 30.04.2014, whereas his pay refixed on 29.10.2014. The excess amount was calculated upon the said refixation, which was done after the retirement of the petitioner.

Even otherwise in the impugned order dated 29.10.2014

(Annexure P-1), it has been stated that pay of the petitioner was wrongly fixed as on 01.01.1986. Petitioner continued to get the said salary after the same was fixed in 1986 till his retirement i.e. 30.04.2014. The wrong pay fixation which was done in 1986, remained in operation for a period of more than five years and therefore, even as per Clause (ii) of para 12 reproduced above, the withdrawal of the benefit from the petitioner and the consequent recovery is contrary to the law laid down by the Hon'ble Supreme Court in Rafiq Masih's case (supra), hence, the recovery, which has been done from the petitioner, cannot sustain in the eyes of law and consequently, the impugned order dated 29.10.2014 (P-1) is set aside and the recovery which has been done from the gratuity of the petitioner is held to be bad.

In view of the above, present writ petition is allowed. The respondents are directed to refund the amount of ₹75,020/-, which has been recovered from the gratuity of the petitioner within a period of two months from the date of receipt of certified copy of this order.

Present writ petition stands allowed in the above terms.

January 17, 2020
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No