

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

**CWP No.11633 of 2018 (O&M)  
Date of decision : February 06, 2020**

**Anita Aneja**

**..... Petitioner**

**Versus**

**State of Punjab and others**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

**Present:-** Mr. Arvind Galav, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

**HARSIMRAN SINGH SETHI J. (ORAL)**

In the present writ petition, the grievance to the petitioner is that vide order dated 09.04.2018 (Annexure P-21) having endorsement dated 16.04.2018, the claim of the petitioner for the refund of ₹1,01,890/-, which has been recovered from the DCRG of the petitioner on account of excess payment, has been rejected illegally.

As per the facts mentioned in the writ petition, the petitioner was appointed as Senior Assistant on 30.01.1990 and thereafter, promoted as Superintendent Grade-II on 04.01.2008. The petitioner claimed step-up of her pay equivalent to her junior, namely Gurmeet Singh, who was also working as a Senior Assistant, and was getting higher pay than the petitioner. Vide order dated 28.01.1999 (Annexure P-1), the petitioner was granted the pay at par with her junior Gurmeet Singh w.e.f. 18.09.1995.

A notice was issued to the petitioner on 04.07.2011 that the benefit of step-up of pay equivalent to Sh. Gurmeet Singh needs reconsideration as the pay of Sh. Gurmeet Singh has been reduced, keeping

in view the objections raised by the Accountant General, Punjab as the benefit of ACP after rendering 18 years of service, granted to Sh. Gurmeet Singh, has been withdrawn. The petitioner filed a detailed reply to the said notice, but the respondents re-fixed the salary of the petitioner at the reduced rate as being given to Sh. Gurmeet Singh, vide order dated 05.08.2011. No order of recovery was passed against the petitioner at that time, but only benefit of step up of pay equivalent to Sh. Gurmeet Singh was withdrawn. The petitioner kept on working till she made a request for voluntarily retirement from service, which request was accepted w.e.f. 05.05.2017 and the petitioner retired from service.

After the retirement, the case of the petitioner for fixing the pensionary benefits was sent to the Account General, Punjab, while authority raised objection as to why recovery of the excess amount, upon refixation of the pay of the petitioner in August, 2011, was not done. The respondents calculated the amount @ ₹1,01,890/- to be recovered from the gratuity of the petitioner. Petitioner filed a representation against the said action, which was rejected vide the impugned order dated 09.04.2018 (Annexure P-21) having endoresement dated 16.04.2018 and an amount of ₹1,01,890/- was recovered from the gratuity of the petitioner. The said recovery from the gratuity is under challenge in the present writ petition.

Upon notice of motion, respondents have filed reply. In the reply, the respondents are defending the recovery effected from the petitioner by stating that the petitioner was granted the step-up equivalent to her junior but thereafter, the salary of the junior employee, namely, Sh. Gurmeet Singh, was reduced and consequently, the pay of the petitioner was

also to be reduced and the same was in fact reduced vide order dated 05.08.2011 but as no recovery of the excess amount was done at the said time, the same has been rightly recovered from the gratuity of the petitioner as the petitioner was not entitled to retain excess payment.

I have heard learned counsel for the parties and have also carefully gone through the record with valuable assistance.

It is a matter of fact that when the pay of the petitioner was reduced by the respondents on 05.08.2011, no recovery was ordered to be done from the petitioner. The petitioner continued in service till she retired on 05.05.2017. The recovery was done after the retirement of the petitioner and that too from the gratuity. The question which arises for the determination of this Court is whether, the recovery is permissible after the retirement of an employee and that too from the pensionary benefits?

The question in respect of the recovery to be done from a retired employee is settled by Hon'ble the Supreme Court of India while deciding ***“State of Punjab Vs. Rafiq Masih(White Washer) & Ors”, (2014) 8 SCC 883***, wherein guidelines have been framed as to under what circumstances, recovery cannot be done from an employee. The relevant paragraph 12 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 ClassIV 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 Clause (i) shows that no recovery can be done from a Class-III or Class-IV employee. As per Clause (ii), no recovery can be done from a retired employee or the employee, who is due to retire within one year. Further, as per Clause (iii), no recovery can be done after withdrawing an order, which remained in existence for a period of more than five years.

In the present case, the claim of the petitioner is squarely covered under Clause (ii) and (iii) of para 12 of the judgment in the case of ***Rafiq Masih*** (*supra*) as the recovery has effected from the petitioner after her retirement and that too from her pensionary benefits i.e. gratuity. Further, the order granting the benefit to the petitioner i.e. step-up of pay

equivalent to her junior was passed on 28.01.1999. The said order was withdrawn by the respondents on 05.08.2011 and therefore, the order, which was withdrawn, on the basis of which the pay of the petitioner was re-fixed, remained in existence for a period of more than five years. Even otherwise, after re-fixation of the pay of the petitioner, no order of the recovery was passed by the respondents till the petitioner remained in service up to 05.05.2017. That being so, the recovery done from the petitioner is not permissible and contrary to the guidelines as envisaged in case of **Rafiq Masih** (*supra*), which have been noted hereinabove.

Learned counsel for the respondents has not been able to bring to the notice of this Court any fact, which differentiate the case of the petitioner from that of **Rafiq Masih's** case (*supra*). That being so, the claim of the petitioner, in respect of her challenge to recovery, needs to be allowed.

Keeping in view the above, the present petition is allowed. The order dated 09.04.2018 (Annexure P-21) having endorsement dated 16.04.2018 is set aside. The amount of ₹1,01,890/-, which has been recovered from the gratuity of the petitioner, be refunded to her within a period of two months from the date of receipt of certified copy of this order.

Writ petition is allowed in the abovenoted terms.

(HARSIMRAN SINGH SETHI)  
JUDGE

February 06, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

Yes