217 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14302 of 2017 (O&M)
Date of decision : January 13, 2020

Ranjit Kaur Tiwana .... Petitioner

Versus

State of Punjab and another .... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Alka Chatrath, Advocate with
Mr. Manwatan Pal Singh, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

<u>HARSIMRAN SINGH SETHI J. (ORAL)</u>

The grievance which is being raised by the petitioner in the present writ petition is that a sum of ₹1,78,710/- was deducted from the gratuity of the petitioner, which was illegal and arbitrary and in the facts and circumstances of this case, the respondents are liable to be directed to refund the same along with interest. The facts stated in the writ petition are as under:-

Petitioner was selected as a S.S. Mistress in the Department of Education on which post she joined on 14th May, 1976. At the time of joining, petitioner was a post graduate as the petitioner had passed Masters in Geography in first division in the year 1968. As, the petitioner's qualification was more than required for appointment to the post of S.S. Mistress, petitioner became entitled for the grant of three increments keeping in view the instructions issued by the Government of Punjab dated 23rd July,1957 and the instructions dated 1st September, 1960. Petitioner was granted the benefits of these increments from the date of appointment.

Prior to 01.01.1978, the rate of increment was ₹12/- and after 01.01.1978, the rate of increment was increased to ₹25/-. Employees, who were granted the benefits of the increment on the basis of higher qualification after 01.01.1978 were granted three increments at the rate of ₹25/-, which created an anomaly. The junior employees started getting higher pay than the seniors as the senior employees were granted the three increments at the unrevised rate of ₹12 only.

Petitioner approached this Court by filing CWP No. 17064 of 1989 claiming that the employees junior to the petitioner, who were similarly situated as the petitioner, are getting higher pay and therefore pay of the petitioner should also be stepped up equivalent to her junior. The said writ petition being CWP No. 17064 of 1989 was allowed by this Court on 01.03.1995 holding that the petitioner is entitled for step up of her salary equivalent to her junior. Ultimately, in compliance of the order passed by this Court on 01.03.1995, the District Education Officer passed an order on 16.07.1996 granting the benefit of the step up of the salary to the petitioner equivalent to her junior. While passing the order dated 16.07.1996, the petitioner was granted the step up of salary equivalent to her male colleague, who was junior to the petitioner but was getting higher pay than the petitioner.

Petitioner continued with the benefit of the step up of pay till she attained the age of superannuation and retired on 30.11.2005.

After the retirement, the gratuity of the petitioner was withheld, keeping in view the objection which was raised by the Accountant General, Punjab that the petitioner could not have been granted the step up of pay equivalent to the male colleagues as there was no *inter se* seniority between the male and the female colleagues and therefore, granting the benefit of step up of pay equivalent to a male colleague, though in pursuance to the order passed by this court was not correct.

Though, the benefit of step up of the pay was granted to the petitioner on the direction of this Court dated 01.03.1995, but the said benefit was withdrawn by the respondents unilaterally and the pay of the petitioner was refixed and upon refixation of the salary, the respondents found that the petitioner is liable to refund the excess amount to the tune of ₹1,78,710/-. As an objection was raised by the Accountant General, Punjab, the petitioner's gratuity was not released by the respondents, though the petitioner had already retired on 30.11.2005. Ultimately, the gratuity amount was released on 23.01.2009 i.e. after approximately four years of retirement and that too by deducting a sum of ₹ 1,78,710/-.

As the action of the respondents in refixing the salary of the petitioner and effecting recovery from the pensionary benefits was causing prejudice to the petitioner, petitioner approached the respondent-Department and brought to its notice that the benefit of step up of the pay, which was granted to the petitioner vide order dated 16.07.1996 has been found to be incorrect on the ground that the same was granted equivalent to the higher salary of a male colleague, but even the female colleagues of the petitioner, who were junior to the petitioner, were getting higher salary and therefore, once there is already an order passed by this Court on 01.03.1995 giving directions to the State of Punjab to step up the salary of the petitioner equivalent to her junior, petitioner be granted the benefit of salary equivalent to that of junior female colleagues.

The claim of the petitioner was considered by the respondent-Department and it was found that one female colleague of the petitioner, namely, Smt. Kusum Lata, who was junior to the petitioner, was getting higher salary than the petitioner and the salary of the petitioner was refixed and brought at par with the salary of junior female employee, which salary was equivalent to the salary which petitioner got in pursuance to the order passed by the District Education Officer on 16.07.1996. This enhancement of salary was done by the respondent-Department vide order dated 11.06.2015(Annexure P-7/1).

After the benefit of step up of the pay was again granted to the petitioner, vide order dated 11.06.2015, she demanded the refund of ₹1,78,710/-, which was deducted from her gratuity being excess amount but the respondents-State declined the said benefit on the ground that the arrears of step up of pay are to be decided, keeping in view the instructions dated 13.10.2014, according to which, only arrears of 38 months are to be granted, and refused to refund the full amount of ₹1,78,710/-.

The question, which arises for the determination of this court is whether the benefit of refund of the amount of ₹1,78,710/- can be declined to the petitioner when the respondents themselves found that even the female colleagues of the petitioner, who were junior to the petitioner, were getting higher salary than her and the respondent-Department again granted the petitioner the benefit of step up of pay, vide order dated 11.06.2015.

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

From the pleadings, which have been recorded above, it is clear that the respondents are taking the benefit of their own wrong. Once, a direction was given by this Court while deciding CWP No.17064 of 1989, decided on 01.03.1995, granting the benefit of the step up of the pay to the petitioner equivalent to her junior colleague, it was incumbent upon the respondent-Department to grant the benefit of the step up of pay equivalent to the female colleague. Respondent-Department passed a wrong order on 16.07.1996 granting the benefit to the petitioner equivalent to the junior male colleague of the petitioner. Once, it has come on record, which is not disputed by the learned State counsel, that vide order 11.06.2015 (Annexure P-7/1), the benefit of step up of salary equivalent to junior femaly collegue has again been granted to the petitioner, there is no doubt that the excess amount which was recovered by the respondent-Deprtment after withdrawing the order dated 16.07.1996, be not restored to the petitioner. The respondent-Department cannot be allowed to treat the benefit, which has been extended vide order dated 11.06.2015, as a fresh instead of treating the said as a benefit, which was to be extended to the petitioner under the order of this Court dated 01.03.1995 passed in CWP No.17604 of 1989.

The stand of the respondent-Department that the instructions dated 13.10.2014 will be applicable to the petitioner is totally misplaced. The claim of the petitioner was to be considered in pursuance to the direction given by this Court on 01.03.1995. It was the respondent-Department, which wrongly granted the benefit of the step up of pay equivalent to a male colleague. Had the officers of respondent-Department applied mind, the benefit which has been extended to the petitioner on 11.06.2015, should have been extended to the petitioner while passing order dated 16th July,1996. At that time, the instructions dated 13.10.2014, which are being taken into consideration for denying the benefits of the arrears to the petitioner were not even in operation.

Though, the learned counsel for the State has very fairly stated that the benefit, which was granted to the petitioner on 16.07.1996 of the step up of the pay, keeping in view the direction given by this Court in CWP No. 17064 of 1989 allowed on 01.03.1995 was the same as extended now on 11.06.2015, no justifiable reason has come forward as to why the said benefit i.e. as extended vide order dated 11.06.2015 should not relate back to the year 1996, especially when the grant of the benefit of the step up of pay was allowed in favour of the petitioner keeping in view the direction issued by this Court in 1995. It is not disputed that the same pay has been extended to the petitioner, which was fixed in pursuance to the order dated 16.07.1996 after the passing of the order dated 11.06.2015. Therefore, the recovery of the excess amount, which was done from the petitioner, needs to be refunded to the petitioner as the respondent have found that the petitioner is entitled for the same benefit, which was allowed on 16.07.1996, except that there is a change in the name of the junior employee, equivalent to whom, the benefit of the step up of pay has been extended to the petitioner. Therefore, the claim of the petitioner for the refund of amount of

₹1,78,710/- is justified when the respondents themselves have found that the petitioner was entitled for the benefit of the step up of pay, though with another female colleague, namely, Kusum Lata, who was junior to the petitioner and was getting a higher pay.

Even otherwise, as per the settled principle of law settled by Hon'ble the Supreme Court of India, even after refixation of the salary, no recovery can be done from a retired employee.

In the present case, petitioner retired from service on 30.11.2005, whereas the recovery was done on 23.01.2009. The Hon’ble Supreme Court of India in ***State of Punjab Vs. Rafiq Masih(White Washer) & Ors(2014) 8 SCC 883*** has given guidelines 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."

Keeping in view the above, it is clear that, the recovery from a retired employee could not have been done and therefore, the same is impermissible.

Learned counsel for the respondents-State states that in the present case, the ***Rafiq Masih's*** case (supra) will not be applicable as the said judgment was rendered in the year 2014 and the recovery from the petitioner was done in the year 2009 and ***Rafiq Masih's*** case (supra) will be prospective in nature.

The Division Bench of this Court in LPA No.2448 of 2016, titled as ***"State of Punjab and Ors. Vs Amrik Singh & Ors.",*** decided on 09.08.2018 has already considered this aspect and has held that there is no restriction put by Hon'ble the Supreme Court of India with regard to the applicability of the judgment in ***Rafiq Masih's*** case (supra) that the same will be prospective. The Division Bench held that ***Rafiq Masih's*** case (supra) will be applicable even on the cases which are pending. The relevant paragraph of the Division Bench judgment is as under:-

*"9. The contention that the principles laid down in **Rafiq Masih** will apply 'prospectively' cannot be accepted as no such limitation has been imposed by the Hon'ble Supreme Court. Taking into consideration the*

current status of the respondents, namely, that many of them have retired or are near retirement and the fact that they are holding Group 'C' & 'D' posts, we are satisfied that no interference in the discretion exercised by learned Single Judge is called for."

Keeping in view the above recorded facts and law, the recovery of ₹1,78,710/- could not have been done by the respondents from the gratuity of the petitioner.

At this stage, learned counsel for the petitioner argues that once, it is clear that the recovery which has been effected from the petitioner after her retirement is bad in law and the petitioner is entitled for the refund of the same along with the interest.

The learned counsel for the respondents has not been able to justify the action of the respondents-State as to why, at the first instance, when respondent-Department implemented the order passed by this Court dated 01.03.1995 wrongly and further despite direction by this Court, how the benefit of step up of the pay, granted to the petitioner in pursuance to the order passed by this Court, could have been withdrawn after the retirement. After withdrawing the benefit of step up of pay, same benefit was once again extended to the petitioner in June, 2015 i.e. after 10 years of the retirement of the petitioner. This shows that the respondent-Department was acting in an irresponsible manner.

Abovestated facts clearly show that the petitioner has suffered prejudice due to irresponsible acts of the respondent-Department and a sum of ₹1,78,710/- was wrongly deducted from the pensionary benefit of the petitioner and is still being retained by the respondents without any valid justification. Only ₹62,188/- have been refund to the petitioner on 05.09.2019.

Another plea which is being raised by the learned counsel for the petitioner is that though the petitioner retired on 30.11.2005, but the pensionary benefits of the petitioner was withheld by the respondents-State without any valid justification and were released only after 2008. Learned counsel for the petitioner argues that after the retirement, in case there is no impediment, the retrial benefits are to be released within a reasonable time and the Full Bench of this Court in ***"A.S. Randhawa Vs. State of Punjab and others,1997(3) SCT 468"***, has held that the reasonable time for the release of the pensionary benefits is two months after the retirement and in case, the amount is not released within a period of two months, employee will be entitled for interest.

Learned counsel for the respondents has not able to justify as to why, the retiral benefits of the petitioner were withheld. Not even a single impediment has been brought to the notice of this court, so as to entitle the respondents to withhold the said benefits. In the absence of any cogent reasons, it can be safely held that the pensionary benefits of the petitioner were withheld without any valid justification.

The Full Bench of this Court in ***A.S. Randhawa's case*** (supra) has held that in case, the pensionary benefit of an employee is not released within a period of two months from the retirement, the employee needs to be compensated by the grant of interest. The relevant paragraph of the judgment is as under:-

> *"Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms*

of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."

Keeping in view the above, as there is no valid reason which has come forward to withholding the pensionary benefits from the petitioner, petitioner is held entitled for the grant of interest on the delayed release of the pensionary benefits. The petitioner will be paid interest @ 9% per annum from the date the amount of the retiral benefits became due till the same were actually released to the petitioner.

Keeping in view the above, the writ petition is allowed and the recovery of the amount of ₹1,78,710/- from the grauity of the petitioner is set aside. Petitioner is held entitled for the refund of the said amount along with interest @ 9% per annum from the date the said amount was deducted till the repayment of the same. It is made clear that the respondent will be entitled for adjusting the amount of ₹62,188/- at the time of refunding the amount of ₹1,78,710/-.

Let the calculation of the amount of interest for which the petitioner is entitled for under this order, be done within a period of two months from the receipt of certified copy of this order and the amount so calculated be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

January 13, 2020
sarita

Whether speaking / reasoned Yes
Whether Reportable: Yes