207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17914 of 2016
Date of Decision: 21.1.2020

Soran Lal

.....Petitioner

Versus

State of Haryana and others

........Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Arun Sharma, Advocate, for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

NIRMALJIT KAUR, J.

Prayer in the present petition is for quashing of the impugned order/notice dated 11.12.2015 (Anneuxre P-1), whereby, an amount of ₹ 1,67,431/- is ordered to be recovered from the gratuity of the petitioner.

While praying for the setting aside the said order/notice, learned counsel for the petitioner raised following arguments:-

(a) The calculation was done in the year 1992-93 by the officials of the respondent- authorities and the recovery is being ordered on 11.12.2015. So the recovery was time barred.

(b) The recovery has caused financial loss to the petitioner by deducting the excess amount out of the gratuity, whereas, the amount was relating to GPF, which has amounted to double jeopardize and especially when the petitioner was never apprised about the same. GPF is a personal property of an employee and not a bounty.

(c) The excess amount was on account of the fault of the respondents and there is no mis-representation or fraud on the part of the petitioner.

Reliance was placed on the judgment of Hon'ble the Apex Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) (2015) 4 SCC 334 to contend that no recovery could have been affected from the employees to whom excess payment has been made for a period in excess of five years before the order of recovery is issued.

Reply has been filed stating therein that while scrutinizing the final payment case of the petitioner, it was noticed that GPF closing balance for the year 1992-93 was ₹ 19,484/- but by mistake it was taken as ₹ 49,484/-. Thus, ₹ 30,000/- was totalled excess in the GPF account of the petitioner. Copy of the GPF ledger card of 1991-92 to 1994-95 is annexed as Annexure R-1. GPF statement for the year 1992-93 showing this inflated amount of ₹ 30,000/- and interest thereon was issued to the petitioner. In the GPF statement, it is clearly mentioned that 'though as per records received in our office the details given are correct, yet debits, credits, balances, interest and any other discrepancy are subject to review at the time of final payment. In case of disagreement with the above mentioned details please communicate the same to our office immediately". As a law abiding citizen and being a Government servant the petitioner was supposed to point out extra credit of ₹ 30,000/- in his GPF account, whereas, legitimate balance in his account was merely ₹ 19,484/- which got mentioned as ₹ 49,484/-. GPF balance for the year 1992-93 and subsequent years till the retirement of the petitioner continued to increase with accruing interest thereon. The petitioner never pointed out this mistake on receipt of GPF statement for the year 1992-93 and onwards, rather he drew advances/withdrawals out of this increased balances. Resultantly, his GPF balance came to (-) ₹ 1,67,431/- including interest upto December 2015 at the time of his retirement. Department and the petitioner were also informed vide No.Fds-21/FP/15-16/1250-51 dated 11.12.2015 accordingly.

Learned counsel for the parties were heard at length.

The arguments raised by learned counsel for the petitioner cannot be sustained in the peculiar facts and circumstances of the present case. As is evident from the facts and the reply filed by the respondents, it is not disputed that the excess amount pertains to a wrong entry in the GPF account of the petitioner. Instead of showing correct balance as ₹ 19,484/- it was written as ₹ 49,484/-. Thus, the said excess amount was not on account of any wrong pay scale or increment or while granting revision of pay scale, which the petitioner may have received many years ago and had paid income tax thereon and had also spent the same and any recovery would therefore mean a financial loss. The GPF account is akin to a saving account in a Bank. Only that money is deposited which belongs to the account holder. Any excess entry is not only a mistake but an account holder has no right on the same and should rather return or bring it to the notice of the Bank concerned about the inflated amount as shown in the balance. Moreover, it is not the case of the petitioner that he had withdrawn the amount lying long ago and had already spent it, rather, it stated by the respondents in their reply that GPF final payment case of the petitioner was forwarded by respondent No.4-General Manager on 3.8.2015, which was received in the office of the Accountant General on 11.8.2015. GPF final payment case of the petitioner was calculated ab initio and it was at that stage when the GPF closing balance for the year 1992-93 came to notice due to totaling mistake. The petitioner continued to get interest on the excess amount of ₹ 30,000/- uptill the date of his retirement. The petitioner never pointed out this mistake on receipt of GPF statement received by him for the year 1992-93. Moreover, the petitioner himself vide his letter dated 5.1.2016 admitted and requested the Department that ₹ 30,000/-, which were shown in excess in GPF statement for the year 1992-93 resulting in an excess amount of ₹ 1,67,431/- in his GPF account at the time of his retirement may be adjusted from DCRG. Thus, the amount was recovered on the request of the petitioner himself from the gratuity.

There is no dispute with the well settled proposition of law laid down in the case of Rafiq Masih (supra). However, in the said judgment, the Court has pointed out certain situations, wherein, the recovery would be impermissible in law and such employees have been detailed as under:-

> "18. ....
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> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (ii) Recovery from the retired employees, or the employees, who are due to retire within one year, of the order of recovery.
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> (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
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> (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."

The Hon'ble Apex Court in Chandi Prasad Uniyal and others vs. State of Uttarakhand and others, (2012) 8 SCC 417 held that for recovery of public money, concept of fraud or misrepresentation by recipients has no role to play. The amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right and law imposes an obligation on payee to repay the money lest it would amount to unjust enrichment. Para No.14 of the said reads as under:-

"14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law.

> Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

Thereafter, the Hon'ble Apex Court in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh, (2016) 14 SCC 267 while setting aside the judgment rendered by this Court held that the judgment in the case of Rafiq Masih (supra) would not apply in the cases, where the officer to whom the payment was made in first instance was early placed on notice that the payment was found to have been made in excess would be required to be refunded. Even in the case of Rafiq Masih (supra) it was observed in para 6 of the said judgment that the Department cannot be denied the right to refund only because the employee was not a party to the mistake or had not misrepresented. Para No.6 of the said judgment reads thus:-

> "6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the

> behest of the employee."

It further went on to hold that interference would be called for only in the case of recovery where such recovery would result in a hardship and it would be iniquitous to payment made. Para No.7 reads thus:-

> 7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

In the present case, the petitioner retired as an Inspector from the Department of Haryana Roadways. The petitioner himself did not point out the inflated balance as entered in his account on receipt of the GPF statement for the year 1992-93. It is admitted that the excess amount does not belong to him and given on account of wrong totaling. The GPF account is settled on the retirement of the petitioner and the petitioner gave in writing that he has no objection, if the excess amount is deducted from his gratuity. Moreover, the amount already stands recovered and adjusted at his own request. It, therefore, does not call for any interference.

In view the above, the present writ petition is dismissed.

(NIRMALJIT KAUR)
JUDGE

21.1.2020
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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No