

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

CWP-2120-2017

Date of decision: - 14.01.2020

Om Parkash Saini

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Dheeraj Mahajan, Advocate,
for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that he retired from service on 30.09.2011 and after 5½ years of his retirement from service, respondents have passed an order on 11.01.2017 (Annexure P-2), by which pay of the petitioner has been refixed by withdrawing one increment, which was granted to him in February, 1978 and consequent recovery of an amount of ₹85,784/- has been ordered, which is contrary to the settled principle of law.

The facts as stated in the writ petition are that petitioner was appointed as a Sub-Inspector on ad-hoc basis in the respondent-department on 10.08.1976. While the petitioner was working on adhoc

basis, a strike call was given in the State of Punjab on 08.02.1978. In order to curb the said strike, an incentive was proposed by the State of Punjab that the employees, who do not participate in the strike, will be granted one increment. Petitioner claimed the said increment on the ground that he did not participate in the strike and was granted the same in the year 1978. In the year 1980, services of the petitioner were regularized as Sub-Inspector. In the year 1981, he was promoted as an Inspector Grade-I and he ultimately retired as such on 30.09.2011 on attaining the age of superannuation. After the retirement, all the benefits, for which the petitioner was entitled, keeping in view the pay which he was receiving at the time of retirement, were allowed in his favour.

After about 5 ½ years of retirement of the petitioner, respondents have passed an order that the increment, which was granted to the petitioner on 08.02.1978, was wrongly granted as the same was admissible only to the regular employees, whereas, on the date of the strike, petitioner was working on ad-hoc basis and therefore, the same needs to be withdrawn. Without giving any opportunity of hearing, the said increment was withdrawn and the pay of the petitioner was refixed. After re-fixing the pay of the petitioner, respondents found that a sum of ₹85,784/- has been paid in excess to the petitioner, which needs to be recovered and an order was passed on 11.01.2017 (Annexure P-2) asking the petitioner to deposit the said amount. The said order is under challenge in the present writ petition.

Learned counsel for the petitioner states that petitioner is not challenging the refixation of pay, but is only challenging the recovery,

which is being ordered in pursuance to the re-fixation of pay, keeping in view the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.3487-3492 of 2004** titled as 'State of Punjab Vs. Surinder Singh', decided on 12.02.2015.

Upon notice of motion, respondents have filed the reply.

In the reply, respondents have stated that the benefit of one increment, which was granted to the petitioner for not participating in the strike, was wrongly granted as the petitioner was working on ad-hoc basis, whereas, the said benefit was only liable to be extended to the regular employees keeping in view Surinder Singh's case (supra) and therefore, once the benefit of increment has rightly been withdrawn, excess amount to the tune of ₹85,784/- and the recovery of the same is valid and permissible as the said amount is public money and petitioner cannot claim the same in excess of his entitlement.

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

It is a matter of fact that the benefit of increment was extended to the petitioner by the respondents themselves in the year 1978. Petitioner continued to get the same till he retired on 30.09.2011. Even after the retirement, respondents did not initiate any proceedings to withdraw the benefit extended to the petitioner in 1978. It was only after a period of 5 ½ years of the retirement and that too unilaterally, respondents withdrew the benefit of increment, which was extended to the petitioner in the year 1978. Upon re-fixation of pay, respondents have found that the petitioner has been extended an amount of ₹85,784/- beyond his

entitlement, which is sought to be recovered, which action has been impugned in the present writ petition.

The question, which arises for the determination of this Court is, whether in the facts and circumstances of this case, recovery of the excess amount can be effected by the respondents from the petitioner?

This question has already been settled by the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, wherein, by the Hon'ble Supreme Court has given the guidelines as to under what circumstances, recovery of the excess amount paid cannot be done 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-said judgment would make it clear that the Hon’ble Supreme Court has held that recovery of the excess amount cannot be effected from a retired employee or an employee, who is nearing retirement. Further, recovery is not permissible in case the order, which is sought to be withdrawn, remained in existence for a period of five years.

In the present case, the benefit of increment, which has been withdrawn, on the basis of which, the recovery is being sought, was granted in February, 1978 and the said benefit has been withdrawn in the year 2017, which is after five years, as envisaged in Clause (iii) of paragraph 12 of the **Rafiq Masih’s case (supra)**.

Even otherwise, petitioner had already retired from service in the year 2011 and no recovery of the excess payment could have been effected from the petitioner in the year 2017 as the same is impermissible as per Clause (ii) of paragraph 12 of the **Rafiq Masih’s case (supra)**.

Learned counsel for the respondents has not been able to point out any differentiable fact so as to disentitle the petitioner to the benefit of the judgment of the Hon’ble supreme Court of India in **Rafiq Masih’s case (supra)**.

In the facts and circumstances of this case, claim of the petitioner qua the recovery is squarely covered by **Rafiq Masih’s case (supra)** and hence, the impugned order dated 11.01.2017 (Annexure P-2) is contrary to the settled principle of law and is accordingly set aside.

While issuing notice of motion, the recovery from the petitioner was stayed and therefore, no recovery has been effected, hence no order of refund is to be passed in this case.

Present writ petition stands allowed in the above terms.

January 14, 2020
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes