

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

**CWP No.24051 of 2018 (O&M)
Date of decision : February 05, 2020**

Pawan Kumar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Karan S. Gill, Advocate for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

Mr. Anil Kumar Ahuja, Advocate for respondent No.5.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the challenge is to the order dated 23.04.2018 (Annexure P-1) passed by the respondents for the recovery of excess amount, which has been paid to the petitioner, keeping in view the re-fixation of his salary.

As per averments made in the writ petition, the petitioner joined the service under respondent No.1 on 01.12.1972 and after getting promotion and attaining the age of superannuation, the petitioner retired from service as Assistant Engineer on 31.05.2011. After the said date, the pensionary benefits of the petitioner were assessed and paid to him. After approximately seven years of the retirement of the petitioner, respondents passed an order on 23.04.2018 (Annexure P-1) whereby, recovery to the tune of ₹70,459/- was ordered to be done from the retiral benefits of the petitioner. Said order of recovery amounting to ₹70,459/- (Annexure P-1) is under challenge in this writ petition.

Upon notice of motion, respondents have filed the reply. In the reply, respondents have stated that the benefit of an increment was wrongly granted to the petitioner in the year 1996 while fixing his pay in the revised pay scale, which could not have been done as the petitioner was already granted an increment when he was granted proficiency-step-up in October, 1994. As per the respondents, the benefit of the increment has been withdrawn and the pay of the petitioner has been re-fixed and upon re-fixation, it has been found that a sum of ₹70,459/- was paid in excess to the petitioner than his entitlement and as the public money was given to the petitioner beyond his entitlement, the same was ordered to be recovered by the impugned order.

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

It is admitted fact that the petitioner retired from service on 31.05.2011 and the recovery order has been passed by the respondents on 23.04.2018 i.e. approximately after seven years of his retirement. The recovery order has been passed by withdrawing the increment, which was granted to the petitioner in the year 1996. The fixation of pay of the petitioner as done in the year 1996 has been withdrawn after a period of approximately 22 years. The question which is posed before this Court whether, under the facts and circumstances of this case, the recovery of the excess amount can be done from the petitioner?

Learned counsel for the petitioner states that the petitioner is not challenging the re-fixation of the pay but restricts his claim to the recovery. With regard to the recovery, to be done from an employee, the

question of law has already been settled by Hon'ble the Supreme Court of India in “***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 (ii) would show that 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 remains in existence for a period of more than five years.

The claim of the petitioner is squarely covered by para 12(ii) and (iii) of the case of **Rafiq Masih** (*supra*). The petitioner had already retired from service on 31.05.2011 when the impugned order was passed on 23.04.2018. Further, pay of the petitioner was re-fixed in the year 2018 after withdrawing the pay fixation order, which was passed in January, 1996.

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 the case of **Rafiq Masih** (*supra*), as noted hereinabove.

Keeping in view the above, the present petition is allowed. The order dated 23.04.2018 (Annexure P-1) is set aside and it is directed that no recovery can be done from the petitioner, in pursuance to the said order.

Learned counsel for the parties are agreed that keeping in view the interim order passed by this Court on 20.09.2018, no recovery has been effected and therefore, no further direction than already given is required.

Writ petition is allowed in the abovenoted terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 05, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

Yes