IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7126-2017
Date of decision: - 11.02.2020

R.K. Anand

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ishwar Lal, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

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HARSIMRAN SINGH SETHI, J. (ORAL)

Petitioner has filed the present writ petition challenging the order dated 28.05.2015 (Annexure P-7), by which, the recovery of ₹1,36,770/- has been imposed on account of excess amount paid to the petitioner after refixing his salary. Further, challenge is to the order dated 20.07.2015 (Annexure P-8), by which, the respondents decided to withhold a sum of ₹2,00,000/- from the gratuity of the petitioner till the finalization of a preliminary enquiry into the allegations of irregularities.

The facts mentioned in the writ petition are that while the petitioner working on the post of Additional Director-cum-Controller, Finance & Accounts, Finance Department, Government of Punjab, he was to retire on 31.05.2015 after availing extension for a period of two years. Before the petitioner could retire, when his pension case was sent to the Accountant General, Punjab for approval, certain objections were raised by Accountant General, Punjab with regard to the fixation of the pay as on 05.10.2008. As per the Accountant General, Punjab, the pay of the petitioner was required to be fixed as ₹31,520/- instead of ₹32,460/- as on 05.10.2008, which needed to be rectified. In pursuance to the said objection, on 06.05.2015, the pay of the petitioner was revised and as per the revised salary, it was found that the petitioner has been paid an excess amount of ₹1,36,770/- due to the wrong fixation and the same was recovered from his gratuity.

Further, when the petitioner was in service, a preliminary inquiry for various irregularities, which were alleged against the petitioner when he was posted as a Joint Controller (F&A) for the period 01.01.2012 to 05.09.2012, was pending against him. As the said preliminary enquiry pointed out certain irregularities done by the petitioner, in anticipation of the charge-sheet to be issued to the petitioner, respondents directed a sum of ₹2,00,000/- be withheld from his gratuity. This order was passed after the retirement of the petitioner on 20.07.2015. In the present writ petition, the order dated 28.05.2015 (Annexure P-7) imposing recovery of ₹1,36,770/- as well as the order dated 20.07.2015 (Annexure P-8) withholding the amount of ₹2,00,000/- are under challenge.

Upon notice of motion, the respondents have filed the reply.

In the reply, respondents have stated that the pay of the petitioner was refixed on 06.05.2015 before his retirement, as his pay was wrongly fixed at ₹32460/- in the year 2008 and the same needed to be corrected keeping in view the objections raised by the Accountant General, Punjab. After refixation of the salary of the petitioner, which was done on 06.05.2015, the excess amount paid to him beyond his entitlement, was recovered and the said act, according to the respondents, is a perfectly valid. Further, in respect of withholding of ₹2,00,000/-, the respondents have stated that there was a preliminary enquiry pending against the petitioner on the allegation of irregularities committed by him and keeping in view that the allegations in the said preliminary enquiry were proved, the department had decided to charge-sheet the petitioner and in anticipation of the said charge-sheet, a sum of ₹2,00,000/- was withheld. The relevant part of the reply is as under: -

> "1. It is respectfully submitted that petitioner retired on 31.05.2015 on attaining the age of 60 years after availing two years extension in service. Pension case of the petitioner was sent by this office vide letter dated 25.3.2015 (Annexure P-2) to Accountant General, Punjab to issue PPO Number & Certificate and Report at earliest. The office of Accountant General (A&E) Punjab made some observations vide its letter dated 17.04.2015/13.4.2015 (Annexure P-3) asking some mandatory certificates and correction of pay fixation at Para 1 (3) which is reproduced as under: -
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> "Pay fixed on 5.10.2008 of ₹32,460/- instead of ₹31,520/- at page No.3 of the service book. This may be looked into and justified with Punjab Govt. orders otherwise all the revised pay fixation entries may be made. Recovery, if any, may also be made and all the pension papers may be prepared accordingly."
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> In compliance of above noted observations, the pay of the petitioner was rectified in the light of instructions and revised salary

slip of petitioner was issued vide this office letter No.TA(S-1 S.R.-2/366)2015/3954 dated 6.5.2015 (Annexure P-5). As per revised salary slip a recovery of ₹1,36,770/- on account of wrong fixation of pay was calculated and intimated by office of Additional Director, Internal Audit Organization (R), Punjab, Chandigarh. On the basis of undertaking given by the petitioner (Annexure R-1), the recovery of amount of ₹1,36,770/- was intimated to Accountant General, Punjab, which is to be made from his DCRG. The pension case of petitioner was resubmitted to office of Accountant General after compliance of observations made earlier vide this office letter dated 13.5.2015.

2. It is respectfully submitted that as per preliminary enquiry which was got conducted by the Industries and Commerce Department, it was alleged that the petitioner during his posting in the said department from 1.1.2012 to 5.9.2012 as Joint Controller (F&A) had purchased stationery and other items beyond his powers. In this regard the answering department vide letter No.1685 dated 17.2.14 requested Industries and Commerce Department to send their comments on the report of preliminary inquiry conducted by Dharmpal, Joint Controller (Finance & Accounts) and also to send inquiry report of Sarbjeet Singh, Joint Director of their department so that the required action may be taken against the officers for alleged irregularities as pointed out in their preliminary enquiry. Despite several reminders/official letters in this regard, no reply/information was received from the said department. Later on Industries and Commerce Department sent enquiry report of Sarbjeet Singh, Joint Director, in which some allegations were proved against the petitioner. On the basis of the above noted report, this department decided to charge-sheet the petitioner for alleged irregularities and to withheld an amount of ₹2,00,000/- from his total gratuity till the finalization of the case in question and the remaining amount of DCRG is released to the petitioner."

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

Learned counsel for the petitioner states that the petitioner is not challenging the refixation of his salary, but is only challenging the recovery, which has been effected from his gratuity.

With regard to the recovery of the excess amount of ₹1,36,770/-, which has been done from the gratuity of the petitioner, the same is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334**. It is not disputed that the pay of the petitioner was fixed in the year 2008 as ₹32460/- and he continued to get the same till he was about to retire, when his pay was refixed about three weeks prior to his retirement on 03.05.2015.

Hon'ble Supreme Court in **Rafiq Masih's case (supra)** has issued certain guidelines as to under what circumstances the recovery cannot be effected 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:-
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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 retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (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 (ii) of paragraph 12 of above judgment would show that no recovery can be done from a retired employee or an employee who has to retire within one year.

In the present case, the recovery has been effected from the petitioner, out of his retiral benefits. The recovery was done in pursuance to an order of refixation passed on 06.05.2015 i.e. three weeks before the petitioner was to superannuate and therefore, as per Clause (ii) of paragraph 12 of **Rafiq Masih's case (supra)**, the recovery was impermissible.

Even as per Clause (iii) of paragraph 12 of **Rafiq Masih's case (supra)**, no recovery can be done in case an order, which remained in operation for a period of more than five years is sought to be withdrawn.

In the present case, the pay of the petitioner was fixed in the year 2008, which order was withdrawn in the year 2015 by refixing the salary of the petitioner i.e. after a period of more than five years and therefore, even as per Clause (iii) of paragraph 12 in **Rafiq Masih's case**

(supra), no recovery could have been done from the petitioner after refixing his salary on 06.05.2015 and therefore, the order dated 28.05.2015 (Annexure P-7) is contrary to the settled principle of law and is accordingly set aside.

The second plea of the petitioner is that a sum of ₹2,00,000/- have been withheld by the respondents in anticipation of issuance of a charge-sheet to the petitioner. No charge-sheet has been placed on record which the respondents have issued to the petitioner in anticipation of which a sum of ₹2,00,000/- was withheld by the respondents. As there is nothing on record to show that any disciplinary proceedings were pending against the petitioner, which would entitle the respondents to withhold a sum of ₹2,00,000/- out of the gratuity, hence, withholding of the said amount, is also beyond the jurisdiction of the respondents.

It is only in case disciplinary proceedings or criminal proceedings are pending against an employee at the time of retirement, respondent-department is within jurisdiction to withhold the leave encashment or the gratuity. In the present case, nothing has been produced on record to show that there were any disciplinary proceedings pending against the petitioner on the date of his retirement i.e. 31.05.2015 so as to entitle the respondents to withhold a sum of ₹2,00,000/-. Thus, withholding of a sum of ₹2,00,000/-, out of the retiral benefits is clearly beyond the jurisdiction of the respondents and therefore, the said action is held to be bad and is accordingly set aside.

Further, the respondents are relying upon an undertaking Annexure R-1, which was given by the petitioner after his retirement for effecting the recovery of ₹1,36,770/- from his retiral benefits. The said undertaking was taken so pensionary benefits of petitioner could be released. Once, the respondents were not authorized to impose the recovery as per the settled principle of law, the undertaking given by the petitioner for recovering the said amount from his retiral benefits especially when the said undertaking is after his retirement, cannot legitimize the recovery of ₹1,36,770/-, which is contrary to the settled principle of law.

Keeping in view the above, the respondents are directed to release the amount to the petitioner i.e. a sum of ₹2,00,000/-, which was withheld and a sum of ₹1,36,770/-, which was recovered, within a period of three months from the date of receipt of certified copy of this order.

The action of respondents in making the recovery of ₹1,36,770/- was contrary to the settled principle of law settled by the Hon'ble Supreme Court in **Rafiq Masih's case (supra)** as the judgment **Rafiq Masih's case (supra)** is prior to the date when recovery was made from the petitioner, therefore, petitioner is also held entitled for interest on the same. Even on the amount of ₹2,00,000/-, which was withheld without there being any jurisdiction with the respondents, the petitioner will be entitled for interest on the same amount as well.

A Co-ordinate Bench of this Court in '**J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,** has held that an employee will be entitled for the interest on an amount, which has been retained and used by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

> "The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."

Keeping in view the above settled principle of law, petitioner is held entitled for interest @ 9% per annum on the payments, which are to be released under this order from the date the amount became due till the same will be released to the petitioner.

Let the calculation and release of the amount of interest alongwith release of the payments be done within a period of three months from the date of receipt of a certified copy of this order as noted above.

One of the claim, which is being raised by the petitioner, is for the grant of pay equivalent to the pay of the junior. The respondents in their reply have already stated that the petitioner has already been granted the step up of his pay equivalent to his junior, vide order dated 18.08.2017 (Annexure R-2).

Learned counsel for the petitioner argues that the arrears after the step up of the pay have been restricted to 38 months only, which is arbitrary.

Once an order has been passed by the respondents and if the petitioner is aggrieved against the said order, petitioner can avail remedy available to him under law in respect of the said order.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 11, 2020
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes