

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

CWP-9835-2018

Date of decision: - 03.02.2020

Gurmej Singh

....Petitioner

Versus

Punjab State Power Corporation Limited and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

Mr. Parminder Singh-I, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that after the retirement, a sum of ₹4,41,862/- has been recovered after refixing his pay on the ground that he was paid an excess amount than his entitlement during his service career, which is contrary to the settled principle of law.

As per the averments made in the writ petition, petitioner was appointed as Sewadar on Class IV post and thereafter, he was promoted as Lower Division Clerk on 17.11.1989. Petitioner continued working with the respondents and ultimately, retired from service on attaining the age of superannuation on 28.02.2017. After the retirement of the petitioner, respondents while releasing the pensionary benefits of the

petitioner imposed a recovery of ₹4,41,862/- and the same was recovered from the gratuity of the petitioner. This order was passed on 09.08.2017 (P-2). Petitioner has contended that no notice whatsoever was given before refixation and affecting the recovery of the excess amount vide order dated 09.08.2017 (P-2). The challenge in the present writ petition is only to the recovery of the excess amount and not to the refixation of the salary.

Upon notice of motion, respondents have filed the reply.

In the reply, the respondents have stated that the petitioner was wrongly given the benefit of promotional scale after nine years of service and as the said benefit was extended contrary to the finance circular issued by the respondent-Corporation, the said benefit was withdrawn and the pay was refixed and upon refixation, it was found that the petitioner has been paid an excess amount of ₹4,41,862/-, which was beyond his entitlement.

Learned counsel for the petitioner on the other hand argues that the recovery, which was effected from the petitioner, was without due application of mind as after the said recovery was done by the respondents, he has been refunded with an amount of ₹93,413/- and now the recovery limits to ₹3,48,449/-, which the respondents have recovered contrary to the settled principle of law.

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

The recovery of the excess amount after the retirement is not at all permissible keeping in view the law laid by the Hon'ble Supreme

Court in State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334 wherein, certain guidelines have been laid down as 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:-

- (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.”

In the present case, at the time of retirement, petitioner was working as a Lower Division Clerk, which is Class III post and further, the recovery was ordered from him in August, 2017 after his retirement on 28.02.2017.

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)**.

The case of the petitioner is squarely covered in his favour to the effect that the recovery could not have been effected by the respondents upon refixation of salary after the retirement of the petitioner in any manner.

In view of the above, present writ petition is allowed. The respondents are directed to refund the amount of ₹3,48,449/-, within a period of two months from the date of receipt of certified copy of this order.

(**HARSIMRAN SINGH SETHI**)
JUDGE

February 03, 2020
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Whether reasoned/speaking?	Yes
Whether reportable?	No