

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CWP-470-2022

Date of Decision :05.09.2022

Satyavir

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sachmeet Singh Randhawa, Advocate for the petitioner.

Mr. Sandeep Singh Mann, Addl. A.G. Haryana.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance of the petitioner is that vide order dated 22.12.2020 (Annexure P/1) passed by the respondents pay of the petitioner was refixed and a sum of Rs.2,14,184/- was ordered to be recovered from the salary of the petitioner, who was working as Senior Accounts Clerk at that time.

As per the factual averments made in the present writ petition, the petitioner was appointed in August, 1990 on daily wage basis and his services were regularized w.e.f. 01.01.1996 and, thereafter, he was promoted to the various posts and on attaining the age of superannuation, the petitioner was to retire on 31.12.2020. While working as Senior Accounts Clerk which is a Class- III post, 09 days prior to the retirement of

the petitioner, respondents passed an order dated 22.12.2020 (Annexure P/1) regarding refixation of the salary of the petitioner and upon refixation of his salary, the respondents held that the petitioner was paid a sum of Rs.2,14,184 in excess of his entitlement, which should be recovered from his salary/dues. The said order is under challenge in the present writ petition.

After notice of motion, the respondents have filed reply wherein, it has been mentioned that the petitioner was to qualify a typing test within a period of one year of his promotion for becoming eligible for annual increment, which typing test though, the petitioner has qualified in the year 2018 but, inadvertently the benefit of the increment was given to him by the respondent-department from 01.07.2013 till December, 2018 hence, recovery of the excess amount paid to the petitioner is very much permissible in the facts and circumstances of the present case.

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

Learned Senior counsel for the petitioner restricted his claim only in regards to the recovery of an excess amount and does not press his claim qua the refixation of the pay.

The only question which is to be ascertained is whether an amount of Rs.2,14,184/- which was paid in excess to the petitioner beyond his entitlement by the respondents can be recovered from him or not. As per 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(1) S.C.T., 195**, no recovery can be made from a employee, who is already retired or is due to retire within one year of the order of recovery.

Further, a recovery of the excess amount cannot be done after granting the benefit, which an employee continued to get for a period of more than five years. Relevant paragraph 12 of the said judgement 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 out weigh the equitable balance of the employer's right to recover.”

In the present case, the petitioner, at the time of passing of the impugned order, had only 08 days left before he was to superannuate and hence, claim of the petitioner with regard to the recovery of excess amount is covered by para 12(ii) of the judgment in **Rafiq Masih's case (supra)**.

Even otherwise, the benefit of the increment was given to the petitioner starting from July, 2013 till December, 2018 which period is more than five years hence, once, the petitioner continued to get the benefit for a period of five years, which was withdrawn only in the year 2018, even on this score, the claim of the petitioner in respect of recovery being done from

him is also covered by para 12 (iii) of the said judgment.

Learned counsel for the respondents has not been able to differentiate the claim of the petitioner keeping in view the settled principle of law settled in **Rafiq Masihs case (supra)**.

Keeping in view the law settled by the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra)**, claim of the petitioner qua recovery of the excess amount being non permissible, is allowed.

Recovery of the amount, if already done from the petitioner, be refunded back to him within a period of two months from the date of receipt of copy of this order.

September 05, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No