IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102+203

CWP-7877-2020 (O&M)
Date of decision: 01.04.2022

TARLOK CHAND

....Petitioner

Versus

UNION OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Ankur Sharma, Senior Panel Counsel
for UOI-respondents No.1 to 4.

Mr. Vikas Chatrath, Advocate
for respondents No.5.

Mr. A.K. Khunger, Advocate
for respondent No.6.

****

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-11484-CWP-2021

Allowed as prayed for, subject to all just exceptions.

CM-11486-CWP-2021

For the reasons mentioned in the application, the same is allowed. The written statement filed on behalf of respondents No.1 to 4 is placed on record.

CWP-7877-2020

The present petition has been filed for setting aside letter dated 20.03.2020 (Anneuxre P-1) by which, recovery of sum of Rs.81,518/- has been ordered from the petitioner on account that excess pension has been paid to the petitioner for the period from July, 2014 to

January, 2020 and the said amount has been ordered to be deducted in monthly instalments of Rs.6143/- till the realization of the said amount.

Learned counsel for the petitioner argues that the petitioner joined as a Sepoy in Jammu & Kashmir Rifles on 12.01.1999 and due to the fact that the petitioner suffered disability, he was discharged from service on 18.01.2013. After the said discharge, the pensionary benefits for which the petitioner is entitled for, was calculated and the pensionary benefits were released to him but vide letter dated 20.01.2020 i.e., after a period of seven years of the fixation of pension, recovery of an amount to the tune of Rs.81518/- was started from the petitioner on account that while fixing the pension, incorrect calculations were done and the petitioner was paid the pension more than his entitlement. The said order directing the recovery to be done from the petitioner in the monthly instalments of Rs.6143/- is under challenge in the present petition.

Learned counsel for the petitioner argues that keeping in view the judgment of the Hon'ble Supreme Court of India in the ***State of Punjab Vs. Rafiq Masih, 2015 (1) SCT 195***, no recovery can be done from a retired employee especially when the payment is being made continuously for a period of five months. Payment which is sought to be withdrawn was continuously being extended to the petitioner for a period of more than five months.

The learned counsel appearing on behalf of the respondents defend the order on the ground that the entitlement of the petitioner was wrongly assessed at the time when the pension was extended to the petitioner and as excess amount had been paid to the petitioner, the same can be recovered from the petitioner keeping in view the judgment of the Hon'ble Supreme Court of India in ***Punjab and Haryana High Court and others Vs. Jagdev Singh 2016 (14), SCC 267*** as, in the present case, the petitioner had given an undertaking at the time of the receiving of the pensionary benefits that in case, there is any incorrect calculation due to which, excess amount is paid, the same can be recovered.

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

It is not in dispute that the recovery of amount, as ordered by the impugned order dated 20.03.2020 is only due to the effect that the entitlement of the petitioner was wrongly calculated at the time when the pensionary benefits were released to him in the year 2014 that being so, an undertaking which has been given by the petitioner at the time of receiving the pensionary benefits that in case any amount, paid to him, in excess of his entitlement, can be recovered, will come into play.

Though, as per the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's*** case (Supra), no recovery can be done from a retired employee or no amount can be recovered after withdrawing a benefit which was being extended to an employee for a period of more than five months prior to the date of withdrawn but, Hon'ble Supreme Court of India, after taking into consideration the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's*** case (supra), while passing an order in ***Punjab and Haryana High Court and others Vs. Jagdev Singh,*** has held that where there is an undertaking given by an employee at the time of receiving of the benefit, the undertaking cannot be ignored and the recovery is permissible. The relevant paragraph of the judgment in ***__Jagdev Sing's__*** case (supra) is as under:-

> *"9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.*
>
> *10. In State of Punjab & Ors etc. v. Rafiq Masih (White Washer) etc. 2015 (1) S.C.T. 195: 2015 (1) Recent Apex Judgment (R.A.J.) 104 : (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.*
>
> *(ili) 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."*
>
> *(emphasis supplied)*

> *11.The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."*

Keeping in view the fact that the submission of undertaking by the petitioner is not disputed and it is also not disputed that the petitioner received the amount beyond his entitlement, the recovery being done by from the petitioner, cannot be faulted with keeping in view the principle of law settled by the Hon'ble Supreme Court of India in ***Jagdev Singh'*** case (supra).

No ground is made out to interfere with the impugned order, wherein the recovery is ordered.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

01.04.2022
Ali

Whether reasoned/speaking? Yes
Whether reportable? No