

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(114+261)

CWP No. 12398 of 2020 (O&M)
Date of Decision : 24.05.2022

Narinder Singh

...Petitioner

Versus

Punjab State Power Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pankaj Sharma, Advocate for the petitioner.

Mr. Pulkit Jain, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

CM-7657-CWP-2022

Present application has been filed for placing on record replication to the written statement filed on behalf of the respondents.

Application is allowed and replication to the written statement filed on behalf of the respondents is taken on record.

CWP No. 12398 of 2020

The challenge in the present writ petition is for two recoveries, which have been done from the pensionary benefits of the petitioner i.e. `73,905/- and `2,25,641/-.

Learned counsel for the petitioner argues that keeping in view the reply filed, the petitioner is not challenging the recovery of `73905/-, which according to the respondents has been done to adjust the punishment,

which was imposed upon the petitioner during the service career.

Learned counsel for the petitioner submits that with regard to recovery of `2,25,641/-, which has been done from the petitioner is of re-fixing the pay of the petitioner after retirement on the ground that the grade pay, which was given to the petitioner in the year 2008, was not correct and the pay of the petitioner has been re-fixed and the respondents have deducted the excess payment of `2,25,641/- from the leave encashment of the petitioner after the retirement is bad in law. Learned counsel for the petitioner argues that keeping in view 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 done from a retired employee from his/her pensionary benefits after re-fixing the pay and that too after retirement.

Upon notice of motion, respondents have filed the reply, wherein, respondents have stated that in the year 2008, the petitioner was given a grade pay which was more than his entitlement, which needed to be re-fixed and as the said fact came to the notice after the retirement of the petitioner, the rectification action was taken and the pay was re-fixed according to his entitlement and while fixing the pay as per the entitlement of the petitioner, it was found that a sum of `2,25,641/- has been given in excess to the petitioner, which needs to be recovered, the same being public money.

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

In the present case, it is a conceded position that the pay of the

petitioner has been re-fixed to his detriment after his retirement from the pensionary benefits. The recovery of the excess amount has been done after the retirement. The petitioner retired on 30.06.2018 whereas, the incorrect grade pay according to the respondents was paid by them in the year 2008. The petitioner continued to get the benefit of the said fixation for a period of 10 years.

As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, no recovery can be done from an employee, who has retired, especially, after withdrawing the benefit, which an employee continued to get for a period of five years. The relevant paragraph 12 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.”

Learned counsel for the respondents has not been able to differentiate the case of the petitioner that the same is not covered in favour of the petitioner keeping in view the exceptions cited by the Hon'ble Supreme Court in para 12 of the judgment of ***Rafiq Masih's case (supra)***.

Keeping in view the above, the recovery of `2,25,641/- which has been done from the petitioner after re-fixing his salary and that too after retirement, is not permissible keeping in view the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***. The said recovery is accordingly set-aside.

Let the recovery of the excess amount be refunded to the petitioner within a period of two months of the receipt of copy of this order.

Petition stands allowed in above terms.

May 24, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

✓
Whether speaking/reasoned : Yes/No

✓
Whether reportable : Yes/No