

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

CWP-17597-2019

Date of Decision: 26.04.2022

Inder Mohan

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surmukh Singh, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. H.S. Jugait, Advocate,
for respondent No.6.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed challenging the order dated 01.08.2018 (Annexure P-7), vide which the recovery of Rs.2,89,808/- was effected from the pensionary benefits of the petitioner.

Learned counsel for the petitioner argues that the petitioner was initially appointed as Basic Health Worker on 15.12.1979 and thereafter he was promoted to the post of Multipurpose Health Supervisor on 29.03.2007. The petitioner retired from the said post on 31.05.2018 and after his retirement, the respondents recovered a sum of Rs.2,89,808/- from his pensionary benefits on the ground that the salary of the petitioner was not correctly fixed in the year 2002 and an excess increment was granted to him while fixing his salary, due to which a sum of Rs.2,89,808/- was paid in excess of the entitlement of the petitioner and the said excess amount was

liable to be recovered from the petitioner. The said order of recovery of

excess amount paid, dated 01.08.2018 (Annexure P-7), is under challenge in the present petition.

Upon notice of motion, the respondents have filed the reply, wherein they have submitted that the salary of the petitioner was wrongly fixed in the year 2002 by granting an increment and keeping in view the wrong fixation of salary, the petitioner has received an excess payment of Rs.2,89,808/- starting from 01.01.2002 till the date of his retirement, which excess amount paid, on being pointed out by the Audit party, has been recovered from the pensionary benefits of the petitioner. As per the respondents, as the petitioner is not entitled to retain the excess payment received by him, therefore, the said recovery of the excess amount has been done from his pensionary benefits.

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

The question of law with regard to the fact that whether a recovery of the excess amount paid to an employee can be effected after the said employee has retired, has already been settled by the Hon'ble Supreme Court of India while passing judgment in “State of Punjab and others Vs. Rafiq Masih (White Washer) etc.”, 2015(1) S.C.T., 195, according to which, no recovery can be effected from a retired employee, especially by withdrawing the benefit, which an employee continued to get for a period of five years before the withdrawal of the said benefit. The relevant paragraph of the said judgment is as under:-

“ - x - x -

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.

- x - x - ”

The case of the petitioner is squarely covered by the aforesaid judgment passed in **Rafiq Masih's case** (supra) as on the date when the recovery was effected from the petitioner, he had already retired and further the petitioner was getting the benefit of the said increment since 01.01.2002 and the same was withdrawn from him in the year 2018, hence, as the petitioner continued to get the benefit of the said increment for a period of

more than five years continuously before the same was withdrawn,

therefore, no recovery from him is permissible under the law.

Learned State counsel is not being able to distinguish the case of the present petitioner with that of **Rafiq Masih's case** (supra) in any manner, so as to point out that recovery of Rs.2,89,808/-, which is being effected from the pensionary benefits of the petitioner, by the respondents is permissible. That being so, the said recovery is held to be bad in law and the order dated 01.08.2018 (Annexure P-7) is accordingly set aside.

The respondents are directed to refund the said amount of Rs.2,89,808/- to the petitioner within a period of eight weeks from the date of receipt of the copy of this order.

Allowed in the above terms.

26.04.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : No