204

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

CWP-15208-2021
Date of Decision: 10.05.2022

Dharambir

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate, assisted by
Mr. Sunil Hooda, Advocate,
for the petitioner.

Mr. Raman Kumar Sharma, Additional A.G., Haryana.

*****

<u>HARSIMRAN SINGH SETHI J.</u> (ORAL)

In the present petition, though a number of prayers have been made by the petitioner, but learned senior counsel appearing on behalf of the petitioner submits that as the petitioner has already retired on 31.01.2020 from the respondent-Department, therefore, he restricts his prayer with regard to quashing the order dated 12.07.2021 (Annexure P-5), vide which recovery of the excess amount is ordered to be effected from the pensionary benefits of the petitioner by the respondent-Department.

Learned senior counsel appearing on behalf of the petitioner argues that the petitioner was working at a Class III post with the respondent-Department at the time of his retirement and after his retirement on 31.01.2020, the respondents not only reduced the salary of the petitioner vide order dated 12.07.2021 (Annexure P-5), but also ordered the recovery of the excess amount paid to him by the respondent-Department, starting from 01.04.2013, which is contrary to the settled principle of law as laid

APURVA
2022.05.18 09:53
I attest to the authenticity and
integrity of this document
High Court, Chandigarh

down 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***. Learned senior counsel appearing on behalf of the petitioner submits that keeping in view the said proposition of law, recovery of the excess amount from the petitioner's pensionary benefits, as being directed, by the respondents vide impugned order dated 12.07.2021 (Annexure P-5) may kindly be set aside.

After notice of motion, the respondents have filed the reply, wherein it has been stated that pay of the petitioner was wrongly fixed by the respondent-Department in the year 2003, which came to the knowledge of the Department after retirement of the petitioner, at the time of fixing his pensionary benefits, and the said mistake was rectified vide impugned order dated 12.07.2021 (Annexure P-5), passed by the respondents. Learned State counsel submits that as the petitioner was paid excess amount than his entitlement, therefore, the said amount, being the public money, is liable to be recovered from the petitioner's pensionary benefits.

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

Keeping in view the settled principle of law laid down by the Hon'ble Supreme Court of India in **Rafiq Masih's case** (supra), according to which, no recovery can be effected from a retired employee, especially from an employee, who was working on the Class III or Class IV post, and further 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 No.12 of the said judgment is as under:-

" - x - x -

12. It is not possible to postulate all situations of

APURVA
2022.05.18 09:53
I attest to the authenticity and
integrity of this document
High Court, Chandigarh

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 -".

Case of the present petitioner is squarely covered by the judgment passed by the Hon'ble Supreme of India in **Rafiq Masih's case** (supra) in his favour as at the time, when pay of the petitioner was re-fixed by the respondent-Department, i.e. in July, 2021, the petitioner had already retired, and hence, the recovery upon re-fixation of pay of the petitioner,

APURVA
2022.05.18 09:53
I attest to the authenticity and
integrity of this document
High Court, Chandigarh

could not have been done by the respondent-Department. Furthermore, pay of the petitioner was wrongly fixed by the respondent-Department in the year 2003, which was later on rectified in the year 2021, therefore, as the petitioner continued to get the benefit of a fixation of pay by the respondent-Department for a period of more than five years before the same was withdrawn, on this account also, recovery of the excess amount from the petitioner's pensionary benefits could not have been effected by the respondents.

Keeping in view the above, prayer of the petitioner for quashing the order dated 12.07.2021 (Annexure P-5) is allowed and the amount recovered from the salary/pensionary benefits of the petitioner, if any, by the respondent-Department, be refunded to him within a period of two months from the date of receipt of the copy of this order.

Allowed in the above terms.

10.05.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

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

APURVA
2022.05.18 09:53
I attest to the authenticity and
integrity of this document
High Court, Chandigarh