IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202 **CWP-14014-2020**
Date of Decision :20.05.2022

Sunil Kumar **..Petitioner**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parveen Kumar Garg, Advocate for the petitioners.

Mr. Navdeep Chhabra, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

Learned counsel for the petitioner argues that in the present petition, vide impugned order dated 14.07.2020 (Annexure P/6), an amount of Rs.78,104/ has been recovered from the pensionary benefits of the petitioner, which action of the respondents is impermissible in law and is liable to be set aside.

Learned counsel for the petitioner submits that while the petitioner was in service, there was a charge sheet dated 17.04.2012 issued against the petitioner with the allegations that the petitioner was required to refix his own salary along with other employees, which act was not undertaken by the petitioner and, therefore, the petitioner should be punished for the said act. During the pendency of the said charge sheet, the petitioner refixed his salary and the excess amount of Rs.1,00,679/- was paid by him to the respondents, after which, the charge sheet was dropped.

Again, in the year 2017, petitioner was issued a charge sheet though, he had deposited the excess amount drawn by him but, as he did not fix the salary of one of his colleague, respondents suffered loss of Rs.78,104/- as the same could not be recovered from the said colleague. The said charge sheet was challenged by the petitioner before this Court and same was quashed. Thereafter, the respondents of their own initiated a process of recovery of Rs.78,104/- on the ground that the petitioner did not refix the salary of one of his colleague while in service and, therefore, the said amount has been deducted from the pensionary benefits of the petitioner.

Learned counsel for the petitioner argues that recovery of an amount of Rs,78,104/- on the ground that one of the colleague had drawn the amount in excess of his entitlement should be paid by the petitioner, is impermissible in law.

After notice of motion, the respondents have filed reply, in which respondents have submitted that charge sheet dated 17.04.2012 issued against the petitioner was dropped after the petitioner deposited a sum of Rs.1,00,679/- but, as the petitioner failed to act against one of his colleague, who had also drawn salary excess than his entitlement, petitioner being a supervisory authority should pay the said amount of Rs,78,104/- which was deducted from his pensionary benefits.

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

In the present case, the petitioner is challenging recovery of Rs.78,104/- which has been done from the pensionary benefits of the petitioner. It is a conceded fact that the said amount has not been received by the petitioner in excess of his entitlement but, the same was received by one of his colleague. Respondents rather than taking action against the said colleague so as to recover the said amount, the same has been recovered from the pensionary benefits of the petitioner, which action of the respondents is totally arbitrary and illegal. Merely, that the petitioner was supervisory authority and should have recovered the amount will not give a right to the respondents to recover the said amount from the pensionary benefits of the petitioner and that to without holding the petitioner guilty of the negligence. Charge sheet issued to the petitioner in 2012 was dropped which also included the same allegations and the second charge sheet issued to the petitioner in the year 2017 was quashed. That being so, the respondents could not have recovered the amount of Rs.78,104/- from the pensionary benefits of the petitioner.

Even otherwise, recovery from a retired employee cannot be made 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.** In the present case, recovery has been done by the respondents from the petitioner after his retirement, which is impermissible keeping in view the Paragraph-12 of the said judgement, which 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."

Keeping in view the facts and circumstances of this case coupled with the law settled by the Hon'ble Supreme Court of India in **Rafiq Masih's case (Supra),** recovery of amount of Rs.78104/- from the petitioner after his retirement by the respondents is held to be bad and the said demand/recovery is accordingly set aside.

Respondents are directed to refund the amount of Rs.78104/- to the petitioner within a period of two months from the date of receipt of copy of this order. Impugned order dated 14.07.2020 (Annexure P/6) is set aside accordingly.

Petition stands allowed in above terms.

May 20, 2022 **(HARSIMR AN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No