IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(219) **CWP-11361-2018**
Date of Decision : May 04, 2022

Harvinder Singh **.. Petitioner**

Versus

PSPCL and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.K. Walia, Advocate, for the petitioner.

Mr. Alok Mittal, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

Present petition has been filed for setting aside the recovery of Rs. 48,060/-, which has been done from the retiral benefits of the petitioner after withdrawing a special increment which was granted to the skilled workers.

Learned counsel for the petitioner argues that in the present case, the petitioner, who was working with the respondents attained the age of superannuation on 31.10.2015 after which, the petitioner became entitled for the grant of retiral benefits. While computing the retiral benefits, the respondents withdrew a special increment, which was granted to the skilled workers in the year 2010 on the ground that the same was wrongly extended to him and the amount paid under the said increment, amounting to Rs. 48,060/- was paid in excess, which has been recovered from the pensionary benefits of the petitioner. Learned counsel for the petitioner submits that the said recovery of the excess amount paid to the petitioner is contrary to the settled principle of law setted 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.***

Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that one special increment was granted to Group D employees, who were in service of the Corporation w.e.f. 01.10.2011 keeping in view the Finance Circular 04/2013 dated 14.02.2013. As per the respondents, the said increment was to be granted to a person who was not granted promotion but as the petitioner got a promotion, still, inadvertently, the said increment was granted to him which was rightly withdrawn and as the excess amount paid to the petitioner was from the public money, hence, the same has rightly been recovered from the pensionary benefits of the petitioner.

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

The only question which arise for determination in this petition is whether, after the petitioner retired in the year 2015, any recovery of the excess payment could have been done from the pensionary benefits especially after refixing the salary of the petitioner retrospectively. In the present case, a benefit of increment which was given to the petitioner in the year 2011, has been withdrawn after his retirement and the excess amount paid under the said benefit, has been recovered.

As per 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 of the excess amount paid can be done from a retired employee or an employee, who was working either on a Group C or Group D post after the withdrawal of a benefit which an employee continued to get for a period of five years prior to the withdrawal of the same. The relevant paragraph 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:-*
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> *(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."*

The prayer of the petitioner is covered under paragraph 12 of the said judgment as recovery has been done from the petitioner after the retirement and the petitioner was concededly working on a Group D post. That being so, the recovery of excess amount paid of Rs.48,0,60/- could not have been done from the petitioner, hence, the said recovery of the excess amount being contrary to the settled principle of law, is set aside. Let the respondents refund the said amount to the petitioner within a period of two months from the receipt of copy of this order.

With regard to the prayer of the petitioner for the grant of interest on the delayed release of the pensionary benefits, the said issue is also covered by the judgment of the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468*,** according to which, an employee is entitled for the release of the pensionary benefits within a period of two months of the retirement in case there is no impediment failing which employee is entitled for the grant of interest on the delayed payments.

Learned counsel for the petitioner has submitted that in the present case, though the petitioner retired in the year 2015 but the pensionary benefits were released to him in November, 2016 onwards despite the fact that there was no impediment in releasing the same.

The said averments has gone unrebutted in the reply. Even during the arguments, no justification for the delayed release of payment has been offered to controvert the prayer of the petitioner for the grant of interest.

That being so, once the delay is more than two months in release of the pensionary benefits after the retirement especially when there was no impediment, the petitioner is also entitled for the grant of interest on the delayed release of the pensionary benefits @ 6% per annum from the date the amount became due till the release of the same. Let the same be also computed within a period of two months from the receipt of copy of this order and the amount so calculated be paid to the petitioner within a period of one month thereafter.

The present writ petition is disposed of in above terms.

May 04, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No