

214 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-18353-2016

Date of Decision: 01.04.2022

Kulwant Singh Mahal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Balraj Singh Rathee, Advocate,
for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Ms. Supriya Garg, Advocate,
for respondents No.2 to 4.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed challenging the impugned orders dated 17.06.2015 (Annexure P-9) and 29.08.2016 (Anexure P-10), vide which the benefits extended to the petitioner with regard to serving in the Indian Army during the 2nd Emergency were withdrawn and a direction with regard to consequent recovery of Rs. 2,64,336/- was passed against him.

Learned counsel for the petitioner submits that the petitioner does not press his claim with regard to the challenge to order dated 17.06.2015 (Annexure P-9), vide which the benefits extended to him with regard to serving in the Indian Army during the 2nd Emergency have been withdrawn but is only pressing his claim with regard to recovery being effected from the pensionary benefits of the petitioner vide order dated

29.08.2016 (Annexure P-10). Learned counsel for the petitioner further

submits that the petitioner joined the Armed Forces of the Union of India on 21.10.1972 and served there till 03.07.1977, which included the period of 2nd Emergency. After being released from the Armed Forces, the petitioner joined the Haryana State Electricity Board on 21.10.1989 as a Junior Engineer and worked on the said post till he attained the age of superannuation, i.e. till 31.08.2010. While the petitioner was working with the respondent-Board, he was extended certain benefits with regard to the service which he had rendered with the Indian Army during the 2nd Emergency. The petitioner continued with the said benefits till he superannuated on 31.08.2010 but after a period of five years of his retirement, the said benefits were withdrawn vide order dated 17.06.2015 (Annexure P-9). Consequent to the said order, the benefits earlier extended to the petitioner were withdrawn by the respondents and the pay of the petitioner was re-fixed and an order was passed to recover an amount of Rs.2,64,336/- from him.

Learned counsel for the petitioner argues that though there might be some justification in withdrawing the benefits which were earlier granted to the petitioner but as per the settled principle of law, once there was no misrepresentation on the part of the petitioner and he continued to get the said benefits for a period of more than five years after retirement before the same were withdrawn from him, case of the petitioner for not effecting the recovery of the excess amount paid is covered by decision of the Hon'ble Supreme Court of India passed in "*State of Punjab and others Vs. Rafiq Masih (White Washer) etc.*", 2015(1) S.C.T., 195, and therefore, the recovery part as ordered in the impugned order dated 29.08.2016 (Annexure P-10) may kindly be quashed.

Respondents have filed the reply defending their action stating that the petitioner was wrongly extended the grant of benefit of 2nd Emergency, though no such instructions were available with the State of Haryana. Learned counsel for respondents No.2 to 4 argues that once the said benefit was not entitled for by the petitioner, the amount claimed by the petitioner under the same, being a public amount, is liable to be refunded by the petitioner, and therefore, the recovery order dated 29.08.2016 (Annexure P-10) is perfectly valid and legal.

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

Nothing has been brought to the notice of this Court that the petitioner misrepresented in any manner at the time when the benefit, which has been withdrawn vide impugned order dated 17.06.2015 (Annexure P-9), was extended to him and said benefit was extended to him by the respondents themselves. As per the settled principle of law, no recovery can be effected from a retired employee and in the present case, the petitioner retired on 31.08.2010 and the said benefit was withdrawn from him after a period of approximately five years of retirement, i.e. on 17.06.2015. That being so, keeping in view the settled principle of law laid down in **Rafiq Masih's case** (supra) once a benefit has been extended to an employee and the said benefit was continuously given for a period of five years, even if the said benefit is withdrawn at a later stage, no recovery can be effected. 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 -"

In the present petition, case of the petitioner is covered under Clause (i) and (ii) of the paragraph of 12 of the aforesaid **Rafiq Masih's case**.

Learned counsel for respondents No.2 to 4 has not been able to dispute the fact that the petitioner continued getting the benefit with regard to service rendered by him in the Armed Forces during the 2nd Emergency for more than five years before the same was sought to be withdrawn. That

being so, no recovery of the excess amount paid can be ordered from the petitioner after withdrawing the benefit. The recovery as being ordered vide impugned order dated 29.08.2016 (Anexure P-10) is set aside. Any amount, if recovered from the petitioner, 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.

01.04.2022*Apurva***(HARSIMRAN SINGH SETHI)
JUDGE**

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes