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

237 **CWP-17428-2017**
Date of Decision :04.07.2022

Bhagwant Singh **..Petitioner**

Versus

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

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mukesh Arora, Advocate for the petitioner.

Mr. Amitoj Singh Dhaliwal, DAG, Punjab.

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<u>Harsimran Singh Sethi, J. (Oral)</u>

The present petition has been filed for setting aside order dated 04.07.2017 (Annexure P/5) passed by the respondents, by which, recovery of a sum of Rs.78308/- has been ordered, keeping in view the wrong fixation of pay of the petitioner, which was done w.e.f. 08.11.1992 onwards.

Learned counsel for the petitioner argues that the petitioner had already retired from service on 31.05.2008 and is receiving pension but, now after a period of 09 years of his retirement, recovery is being done from the pension of the petitioner, which is contrary to 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.** Learned counsel for the petitioner further argues that no recovery can be done from a retired employee.

After notice of motion, respondent-State has filed reply wherein, it has been conceded that pay of the petitioner was wrongly fixed by the respondents starting from 08.11.1992 onwards, which fact had come to their knowledge in the year 2017, after which, the pay of the petitioner was refixed and recovery of an excess amount of Rs.78308/- paid to the petitioner has been ordered. Learned State counsel submits that petitioner had also given an undertaking (Annexure R/1) that in case pay of the petitioner is wrongly fixed, the respondents are within their jurisdiction to recover the excess amount from him and, therefore, in the present case, the judgement of Hon'ble Supreme Court of India in **High Court of Punjab and Haryana and others. vs. Jagdev Singh 2016 (14) SCC 267** is applicable.

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

In the present case, a recovery is being done from the petitioner after 09 years of his retirement. The reason of recovery is that the pay of the petitioner was wrongly fixed starting from 08.11.1992 onwards. Surprisingly, no one noticed the said discrepancy while the petitioner was in service or when he retired. Now after 09 years of retirement of the petitioner, recovery is being done, which is impermissible in law keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra).** Relevant paragraph 12 of the said judgment is as under:-

> *"12. It is not possible to postulate all situations of hardship, which wouldgovern 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."*

A bare perusal of the above paragraph 12 would show that no recovery can be done from a retired employee and no recovery could have been done with regard to the benefits, which the employee continued to get for a period of 5 years before the same was withdrawn.

In the present case, the benefit which was given to the petitioner in the year 1992 and he continued to get the same till his retirement in the year 2008, is being withdrawn by the respondents in the year 2017 much after his retirement and, therefore, the claim of the petitioner is covered by the judgement of the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra).**

With regard to the argument addressed by the learned State counsel that as an undertaking was given by the petitioner at the time of fixation of his pay, copy of which has been appended with the reply as Annexure R-1/T, hence, judgment of the Hon'ble Supreme Court of India in

Jagdev Singh's case (Supra) is applicable in the present case, cannot be accepted for the reason that an undertaking (Annexure R/1) has been given by the petitioner in the year 2006 with regard to the grant of revised pay scale, which was given to him in the year 2006, whereas, the benefit which has been withdrawn from the petitioner is with respect to wrong fixation of his pay in the year 1992. No undertaking was ever given by the petitioner at the time of fixation of his pay in the year 1992, hence, an undertaking (Annexure R-1/T) given by the petitioner in the year 2006 does not give jurisdiction to the respondent to recover the excess amount from the petitioner in respect of fixation of his pay in the year 1992.

Hence, keeping in view the settled principle of law, recovery being done from the petitioner by the respondents is held to be bad. Order dated 04.07.2017 (Annexure P/5) passed by the respondents is set aside. Recovery, if any, done from the petitioner be refunded to him within a period of one month from the date of receipt of copy of this order.

July 04, 2022 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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