IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(210) **CWP No. 21432 of 2016**
Date of Decision : 19.07.2022

Ashok Kumar Gupta

...Petitioner

Versus

Haryana Urban Development Authority and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.K. Agnihotri, Advocate for
Mr. Raman Gaur, Advocate for the petitioner.

Mr. Abhilaksh Grover, Advocate for the respondents.

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Harsimran Singh Sethi J. (Oral)

1. In the present writ petition, the grievance of the petitioner is that after his retirement, the respondents have deducted an amount of ₹1,69,014/- from his retiral benefits, which is impermissible keeping in view the facts and circumstances of the present case coupled with the settled principle of law.

2. As per the averments made in the petition, the petitioner was appointed as a Section Officer with the respondent-HUDA on 19.01.1978. Thereafter, petitioner was promoted as Sub Divisional Engineer (Civil) on 30.08.2006. At the time of promotion, the respondents had imposed a condition in the promotion order that the departmental professional examination, as prescribed by the authorities concerned, is to be cleared by the petitioner within a period of three years of joining the said post, failing which the petitioner will not be allowed for the grant of increment. Though,

the condition existed but, the respondents never implemented the said condition qua the petitioner through his remaining service period. The petitioner was being given the increment regularly till he attained the age of superannuation.

3. The petitioner attained the age of superannuation on 27.05.2015 and was relieved from duty on 31.05.2015. 15 days prior to the retirement, the respondents realized that despite the condition No. 5 in the promotion order, the petitioner has been allowed the increment though, the petitioner did not clear the departmental examination, on the basis of condition no. 5 of the promotion order, respondents re-fixed the salary of the petitioner after withdrawing the increment and it was noticed by the respondents that a sum of ₹1,69,014/- was paid to the petitioner in excess of his entitlement.

4. The petitioner retired from service on 31.05.2015 and the said excess amount was deducted from his retiral benefits. The said deduction of ₹1,69,014/- is under challenge in the present petition.

5. After notice of motion, the respondents filed a reply, wherein, they have stated that the petitioner was not entitled for the grant of increment keeping in view Clause 5 of the promotion order dated 30.08.2006, a copy of which has been appended by the petitioner as Annexure P-2 hence, once the petitioner never passed the departmental examination after getting promotion in the year 2008, the petitioner cannot claim the benefit of increment and a mistake, which occurred in granting the petitioner the benefit of increment, has been rectified by the impugned order and as the petitioner was paid a sum of ₹1,69,014/- beyond his entitlement,

being the public money, the same was rightly recovered from his pensionary benefits.

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

7. The only question, which arises is whether, after the retirement, the respondents could have recovered the excess payment made to the petitioner from the pensionary benefits. The question raised in the present petition has already been answered 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,*** wherein, Hon'ble Supreme Court of India has held that no recovery can be made in respect of withdrawal of benefit, which an employee continues to get for a period of five years before the same was withdrawn.

8. In the present case, the recovery has been done after the retirement of the petitioner, which is impermissible and the benefit of increment, which was being given to the petitioner starting from the year 2008 was withdrawn in the year 2015 and the said benefit was being extended to the petitioner for a period of five years before the same was withdrawn and, therefore, the recovery could not be done. The relevant paragraph 12 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:-*

(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."

9. Not only this, the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022,*** has held that where there is no fraud played by an employee in getting a particular amount then the excess payment made cannot be recovered. The relevant paragraph of the said judgment is as under:-

"(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees

but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."

10. In the present case, the respondents themselves extended the benefit of increment to the petitioner on their own hence, as the petitioner never misrepresented or played any fraud in getting the excess amount, the recovery of the excess amount paid to the petitioner could not have been done from the petitioner after his retirement.

11. Learned counsel for the respondents has not been able to rebut the factual aspect as well as the legal aspect noticed hereinbefore, which covers the case in favour of the petitioner.

12. Keeping in view the above, the present petition is allowed. The recovery of sum of ₹1,69,014/- done from the petitioner after his retirement is held to be bad. Let the respondents refund the said amount to the petitioner within a period of two months of the receipt of copy of this order.

July 19, 2022 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes