# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**(218)** **CWP No. 21837 of 2017**
**Date of Decision : 13.05.2022**

**Dr. Dalip Singh**

**...Petitioner**

**Versus**

**State of Punjab and others**

**...Respondents**

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. M.J.S. Bedi, Advocate for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

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***Harsimran Singh Sethi J. (Oral)***

In the present petition, the challenge is to the order dated 29.07.2016 (Annexure P-3) as well as order dated 29.11.2016 (Annexure P-4) by which, the respondents had initiated action of recovery of the excess amount paid to the petitioner.

As per the averments made in the petition, the petitioner, who was working as a Doctor with the respondents, retired on attaining the age of superannuation on 31.03.2016. After the retirement, the petitioner was given the pensionary benefits and while computing the same, the respondents found that the petitioner was on extension for a period of two years from 01.04.2014 to 31.03.2016, during which the petitioner was also given the benefit of increment, which was not admissible to him. Therefore, the excess amount paid to the petitioner, which was calculated vide

Annexure P-4 amounting to ₹1,97,767/- is liable to be recovered, which was actually recovered from the gratuity of the petitioner.

Learned counsel for the petitioner argues that in the present case, not only the recovery was ascertained by the respondents without holding an enquiry and giving opportunity of hearing to the petitioner but, the said recovery was being made from the pensionary benefits of the petitioner after re-fixing his salary and the same was impermissible keeping in view the judgment of 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, they have mentioned that actual cause of recovery is that the petitioner was granted annual increment from 01.01.2011 instead of 01.06.2011 while fixing the salary of the petitioner, which error was rectified after the retirement and after re-fixing the salary, it was discovered that petitioner was paid an excess amount of ₹1,97,767/- and that being the public money, the same was rightly recovered from him.

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

The question as to whether, the recovery can be done from the retired employee or not is settled by the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra).*** In the said case, in para 12, it has been held that no recovery can be done from a retired employee after re-fixing his/her salary. The relevant para 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."*

In the present case, the petitioner retired on 31.03.2016 and his pay was re-fixed thereafter on the ground that he was granted increment w.e.f. 01.01.2011 whereas, he was only entitled for the same w.e.f. 01.06.2011 due to which, his salary was re-fixed and keeping in view the said re-fixation, the recovery of ₹1,97,767/- was done from the gratuity of the petitioner. Once, the petitioner was not at fault with regard to the grant of benefit and the said benefit was given to him for a period of five years prior to the date, the same was withdrawn, keeping in view the para 12 of the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra),*** the recovery was impermissible as the petitioner had also retired by the said date.

Keeping in view the above, the recovery of ₹1,97,767/- has been done from the gratuity of the petitioner without any jurisdiction and, therefore, the same is set-aside. The respondents are directed to refund the amount ₹1,97,767/- to the petitioner within a period of two months of the receipt of copy of this order.

The further prayer of the petitioner is for the grant of interest on the delayed release of the pensionary benefits. In para 7, the petitioner has mentioned that the commuted value of the pension was paid to the petitioner on 02.11.2016 in two installments and the leave encashment was paid to the petitioner on 25.04.2017 whereas, the gratuity was paid to him on 10.01.2017. Learned counsel submits that the said payments were delayed without there being any impediment to the said effect.

The said averments have not been denied by the respondents in their reply, meaning thereby that the delay, which has occurred in the payment of the retiral benefits, is attributable to the respondents.

A Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468,** has held that where there is an inordinate delay and the delay is not justifiable, employee will be entitled for interest. The relevant paragraph of said judgment is as under:-

> *"Since a government employee on his retirement becomes immediately entitled to pension and other benefits in*

*terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months front the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."*

Apart from this, a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

*"In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

Keeping in view above, the prayer of the petitioner for the grant of interest on the delayed release of payment is also covered by the judgment of the Full Bench of this Court in **A.S. Randhawa's case (supra) and *J.S. Cheema's case (supra),*** and the petitioner is held entitled for the grant of interest on the delayed release of pensionary benefits @ 6% per annum from the date the amount became due till the release of the same. Let the computation of interest under this order be done by the respondents within a period of two months of the receipt of copy of this order and the amount so calculated be released to the petitioner within a period of one month thereafter.

Petition is allowed in above terms.

**May 13, 2022** **(HARSIMRAN SINGH SETHI)**
*kanchan* **JUDGE**

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