

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(218-3)

CWP No. 22105 of 2017

Date of Decision : 13.05.2022

Jagbir Singh Sangwan

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Saurabh Dalal, Advocate for the petitioner.

Mr. Narender Singh Behgal, A.A.G., Haryana.

Harsimran Singh Sethi J. (Oral)

In the present petition, the grievance of the petitioner is that the petitioner retired from service on attaining the age of superannuation on 30.04.2017 and after the retirement, the petitioner was given a show cause notice on 01.06.2017 (Annexure P-1) that the benefit of ACP, which was extended to the petitioner w.e.f. 01.01.1996 and 01.02.2002 on completion of 10 and 20 years of service respectively, was wrongly extended to him and, therefore, the same needs to be withdrawn along with the recovery of the excess amount paid to him. The petitioner filed the reply to the same but the respondents issued an order dated 10.07.2017 (Annexure P-5) re-fixing the salary of the petitioner after withdrawing the benefit of ACP and issued an order of recovery dated 17.07.2017 (Annexure P-4) amounting to ₹1,54,112/-. The said order of recovery is under challenge in the present petition.

After notice of motion, the respondents have filed the reply wherein, it has been mentioned that as the petitioner did not acquired the degree in Engineering and had not passed the departmental examination, therefore, he was not eligible for promotion but despite the said fact, the petitioner was granted Ist and 2nd ACP on completion of 10 and 20 years of service w.e.f. 01.01.1996 and 01.02.2002, which has rightly been withdrawn after the said fact came to the knowledge of the respondents. Learned counsel for the petitioner submits that as excess amount was paid to the petitioner, which is a public money, the same was also rightly ordered to be recovered.

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

In the present case, the respondents re-fixed the salary of the petitioner after his retirement and ordered the recovery of the excess amount paid. Nothing has come on record to show that petitioner had played any mischief while getting benefit of Ist and 2nd ACP, which benefit was withdrawn after his retirement. ACPs were extended by the respondents themselves to the petitioner and there is no fraud played by the petitioner and, therefore, the excess amount cannot be recovered from the petitioner after his retirement 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.*** 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.”

A bare perusal of the above reproduced settled principle of law makes it clear that no recovery can be done from a retired employee and further no recovery can be done after withdrawing a benefit, which employee continued to get for a period of 5 years hence, the impugned order of recovery of the excess amount paid is set-aside.

As the petitioner is not challenging the re-fixation but only recovery of the excess amount, which order of recovery of the amount of ₹1,54,112/- is already set-aside, no further order needs to be passed. In case, any amount has been recovered from the petitioner in pursuance to the

said impugned order, the same be refunded back to the petitioner within a period of two months of the receipt of copy of this order.

Petition is allowed in above terms.

May 13, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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