

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(218-7)

CWP No. 22810 of 2017

Date of Decision : 13.05.2022

Ram Sarup

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Lather, Advocate for the petitioner.

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

Harsimran Singh Sethi J. (Oral)

The present petition has been filed challenging the order dated 19.09.2016 (Annexure P-11) by which, the respondents have imposed recovery upon the petitioner after re-fixing his pensionary benefits.

In the present petition, the claim of the petitioner is that he retired from service on attaining the age of superannuation on 31.12.2012 and at the said time, the petitioner was receiving the basic pay of ₹21,640/- along with the grade pay of ₹4200/- and all his pensionary benefits were fixed on the said pay and paid to the petitioner. The respondents, vide impugned order dated 19.09.2016 (Annexure P-11) i.e. after more than three and half years of the retirement of the petitioner, re-fixed the salary of the petitioner and reduce the basic pay from ₹21,640/- to ₹20,890/- and affected the recovery of the excess amount from the petitioner. The said order of re-fixation and the recovery of the excess amount paid to the petitioner amounting to ₹31,313/-, is under challenge.

At the time of hearing, learned counsel for the petitioner submits that the petitioner is not challenging the re-fixation but only the recovery of the excess amount.

After notice of motion, the respondents have filed the reply, wherein, the respondents have stated that as the pay of the petitioner was wrongly fixed as and when, the said fact came to the knowledge, the pay of the petitioner was re-fixed though, the same was done after three and half years of his retirement. The respondents submits that as the excess amount is a public money, the same was rightly recovered from the petitioner.

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 ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.*** 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 pay of the petitioner was re-fixed three and half years after retirement and the recovery of the excess payment has been ordered, which is impermissible. Recovery from a retired employee cannot be permissible, especially, when there is no role of the petitioner in fixing his own pay as the respondents themselves were at fault in fixing of the wrong pay hence, the recovery of the excess amount is impermissible keeping in view the judgment in ***Rafiq Masih's case (supra)*** hence, the excess amount sought to be recovered from the petitioner amounting to Rs. 31,313/-, was bad in law as there was no jurisdiction with the respondents to do the same. The recovery is accordingly set-aside. Let the recovered amount of Rs. 31,313/- be refunded to the petitioner within a period of two months of the receipt of copy of this order.

Petition stands allowed in above terms.

May 13, 2022
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

✓
Whether speaking/reasoned : Yes/No

✓
Whether reportable : Yes/No