

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

214

CWP-26572-2016

Date of Decision :09.05.2022

Surjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Nitesh Singla, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

The present writ petition has been filed for quashing of impugned order dated 21.06.2016 (Annexure P/1), by which, recovery of the excess salary paid to the petitioner from April, 2001 to March, 2005 amounting to Rs.45,467/- has been ordered.

Learned counsel for the petitioner argues that the impugned order has been passed in the year 2016, whereas, the petitioner had retired from service on 31.08.2004 i.e. after 12 years of his retirement, which is impermissible, keeping in view the 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 State counsel submits that as the petitioner was paid excess salary, which was pointed out by the auditor, the petitioner was asked to deposit the same.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

The issue whether recovery of excess amount paid to an employee can be done after his/her retirement, has already been settled by a Honble Supreme Court of India in Rafiq Masih's case (supra). Paragraph 12 of the said judgement 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 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 the 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 prior to the date of withdrawal.

In the present case, recovery is being effected from the petitioner after the 12 years of his retirement and that too on the ground that some excess amount has been paid to him. Nothing has been pointed out

that the petitioner in any manner faulted in getting excess amount rather the respondents themselves gave the excess amount to the petitioner. Hence, the order of recovery of the excess amount paid by the respondents to the petitioner is not permissible, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in Rafiq Masih's case (supra).

Even otherwise, nothing has been brought to the notice of this Court that any enquiry was being done by the respondent before effecting the recovery of the amount from the petitioner, which was sought to be recovered after 12 years of the retirement of the petitioner. A demand notice has been issued by the respondents without associating the petitioner and, therefore, keeping in view the facts and circumstances of this case, recovery of the amount, which is being effected from the petitioner, is impermissible not only on the basis of facts but as per the settled principle of law also.

As the recovery of the excess amount paid to the petitioner by the respondents was already stayed by this Court, no further orders are required to be passed in this regard.

Petition stands allowed in above terms.

May 09, 2022
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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