

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-21943-2018

Date of Decision :08.04.2022

Karam Singh

..Petitioner

Versus

Punjab Water Resources Management & Development
Corporation Limited

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Satnam Singh Walia, Advocate for the petitioner.

Mr. Aman Sharma, Advocate for the respondent.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed challenging order dated 06.05.2014 (Annexure P/1) whereby, an amount of Rs.79328/- has been recovered from the pensionary benefits of the petitioner.

Learned counsel for the petitioner submits that in the present case, the petitioner joined the service of the respondents on 19.02.1979 and retired on attaining the age of superannuation on 31.01.2013. As per the petitioner, while calculating his pensionary benefits, respondents have recovered an amount of Rs.79328/- from his pensionary benefits, which is clear from order dated 06.05.2014 (Annexure P/1). Learned counsel for the petitioner argues that as per the settled principle of 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, no recovery can be effected from an employee, who had already retired and, therefore, action of the respondents is contrary to the settled principle of law.

After notice of motion was issued, respondent-State has filed reply, wherein, it as been stated that pay of the petitioner was wrongly fixed w.e.f. 01.01.2006 and the petitioner was granted grade pay of Rs.3000 instead of Rs.2800, which mistake was rectified and as the same was noticed at the time of retirement of the petitioner, the excess amount paid to the petitioner was recovered from his pensionary benefits and, therefore, the prayer of the petitioner for refund of the said amount may kindly be rejected.

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

The question whether any recovery can be made from a retired employee is already decided by the Hon'ble Supreme Court of India while passing order in Rafiq Masih's case (supra). Relevant portion 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 would show that no recovery can be effected from a retired employee. Further, recovery of the excess amount paid after withdrawal of benefit, which was wrongly given and enjoyed by the employee for a period of five years cannot be done. In the present case, as the benefit was wrongly given to the petitioner in the year 2006 and the same was withdrawn in 2013 and the excess amount paid was recovered after the retirement of the petitioner. Given the said facts, the case of the petitioner is squarely covered by the judgment of Hon'ble Supreme Court of India in Rafiq Masih's case (supra) and the recovery of excess amount paid cannot be recovered.

Further, as per the respondents, the petitioner was wrongly granted grade pay of Rs.3000 instead of Rs.2800. That being so, respondents should have given show cause notice to the petitioner before withdrawing the same but, concededly, no such procedure was adopted

before withdrawing the said benefit and effecting recovery from the petitioner and, therefore, the said action of the respondents is a violation of principle of natural justice, which cannot be sustained in the eyes of law.

Keeping in view the above, recovery of an amount of Rs.79328/- which has been effected from the pensionary benefits of the petitioner is held to be bad. Respondents are directed to refund the same within a period of two months from the date of receipt of copy of this order.

No further argument has been raised by the learned counsel for the petitioner.

April 08, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No