

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

CWP-24546-2017

Date of Decision: 26.05.2022

Ram Asray

..... Petitioner

Versus

The Punjab State Power Corporation Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pankaj Sharma, Advocate,
for the petitioner.

Mr. Vaibhav Narang, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, challenge is to the order dated 16.01.2014 (Annexure P-4), passed by respondent No.2, vide which order, a sum of Rs.96,697/- has been recovered from the gratuity amount of the petitioner, after his retirement.

Learned counsel for the petitioner submits that the petitioner retired from the services of the respondent-Department on 31.10.2013. After his retirement, his case was sent to the higher authorities for approval of the grant of pensionary benefits to him, during which period, the respondents realized that the petitioner was incorrectly granted the benefit of proficiency step-up, which benefit was beyond his entitlement, and therefore, the said benefit was withdrawn from the petitioner by the respondents and pay of the petitioner was re-fixed. Learned counsel further submits that keeping in

view the re-fixed salary of the petitioner, the respondents found that the petitioner has been paid a sum of Rs.96,697/- beyond his entitlement, which amount is recovered from the gratuity amount of the petitioner, vide impugned order dated 16.01.2014 (Annexure P-4).

After notice of motion, reply has been filed by the respondents, wherein it has been stated that the petitioner was extended a time bound scale in terms of Clause 8 of the Finance Circular No.4/89, dated 05.01.1989, but the said benefit was wrongly extended to the petitioner, as the he was not entitled for the grant of said benefit. Learned counsel for the respondents submits that as the said fact came to the knowledge of the respondent-Department after retirement of the petitioner, while fixing his pensionary benefits, therefore, pay of the petitioner was re-fixed accordingly after his retirement by the respondents and the excess amount paid to the petitioner, being the public money, was rightly recovered from the pensionary benefits of the petitioner.

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

The question which arises for the determination in the present case is whether recovery of an excess payment can be done from a retired employee or not. The said question has already been decided by the Hon'ble Supreme Court of India, while passing judgment in **“State of Punjab and others Vs. Rafiq Masih (White Washer) etc.”**, 2015(1) S.C.T., 195, according to which, no recovery can be done from an employee who has already retired. Further as per the said judgment, no recovery can be done from an employee in case, the benefit which is withdrawn from him/her, was granted to him/her for a period of more than five years continuously by

the Department. The relevant paragraph No.12 of the said judgment is as under:-

“ - x - x -

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.

- x - x -”.

Case of the petitioner is squarely covered by the said judgment

passed in **Rafiq Masih's case** (supra), as the recovery of Rs.96,697/- was effected from the petitioner, after re-fixing his salary after his retirement, by the respondents. Further, as the benefit of proficiency step-up was extended to the petitioner in the year 1989, and the said benefit was sought to be withdrawn from him in the year 2013, therefore, the petitioner continued to get the said benefit for a period of more than five years.

Apart from this, as per another judgment passed by the Supreme Court of India in **Civil Appeal No.7115 of 2010**, titled as **“Thomas Daniel Vs. State of Kerala and others”**, decided on 02.05.2022, where an employee was not at fault with regard to the extension of benefit and there is no representation on behalf of the employee concerned to get the emoluments beyond his/her entitlement, the recovery cannot be made. The relevant paragraph of the said judgment is as under:-

“ - x - x -

(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or

corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

- x - x -”

Keeping in view the above, the case of the petitioner is squarely covered by both the settled principles of law, as noticed hereinbefore, in his favour, hence recovery of the amount of Rs.96,697/- effected from gratuity amount of the petitioner by the respondents is held to be bad in the eyes of law.

Let the said recovered amount of Rs.96,697/- be refunded back to the petitioner by the respondents within a period of two months from the date of receipt of the copy of this order.

Allowed in the above terms.

26.05.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes

2. Whether reportable : No