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

(209) **CWP No. 4326 of 2015**
Date of Decision : 09.03.2022

Nar Dev

...Petitioner

Versus

The State of Haryana and others

...Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ravi Verma, Advocate for the petitioner.

Ms. Upasna Dhawan, Assistant Advocate General, Haryana.

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Harsimran Singh Sethi J. (Oral)

In the present petition, the prayer of the petitioner is for quashing of order dated 25.11.2013 (Annexure P-5) by which, after withdrawing an increment, which was extended to the petitioner w.e.f. 01.01.2006, the recovery of the excess amount was being ordered.

Learned counsel for the petitioner argues that in the present case, the petitioner is not challenging the withdrawal of the increment but is only aggrieved with regard to the recovery, which is being done from him, as the same is not permissible keeping in view the fact that on the date when the order of recovery is passed, the petitioner had already superannuated on 31.03.2013. Learned counsel for the petitioner submits that keeping in view the settled principle of law settled by 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, the order dated 25.11.2013 (Annexure P-5) by which, the recovery has been ordered from the petitioner, is contrary to the settled principle of law and is liable to be set-aside.

Learned State counsel, on the other hand, submits that though, the recovery from a retired employee is not permissible keeping in view the judgment in ***Rafiq Masih's case (supra)*** but where there is an undertaking given by the employee at the time of grant of the said benefit to the effect that the benefit so extended is found inadmissible at a later stage, the recovery of excess amount can be done. Learned State counsel places reliance upon a judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 3500 of 2006 titled as ***High Court of Punjab & Haryana and others Vs. Jagdev Singh***, decided on 29.07.2016.

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

In the present case, the question is whether an undertaking given after the retirement, while receiving the pensionary benefits that any benefit extended to the petitioner, which is found to be inadmissible, can be put in operation so as to recover the excess amount, which was paid to an employee while in service or not. In the present case, the increment, which was given to the petitioner w.e.f. 01.01.2006 was sought to be withdrawn after a period of seven and half years. Nothing has been produced before this Court to show that at the time when the petitioner was extended the said increment while in service, there was any undertaking given by the petitioner that in case at any later stage, the grant of the said increment is found to be inadmissible, the petitioner will refund the amount so received. The undertaking given at the time of retirement can only be used in respect of the release of the retiral benefits and not with regard to any benefit which an employee received while in service. The undertaking given by the petitioner at the time of retirement, cannot be linked with a benefit, which the petitioner was extended at the time when he was in service and that too when there is no mis-representation on the part of the petitioner at the time of grant of said benefit.

The undertaking can only be pressed into operation for recovery of the amount in case, the same was extended in relation to the benefit, which is sought to be withdrawn. That being so, in the facts and circumstances of the present case, when no undertaking was given by the petitioner at the time of grant of interest, which is sought to be withdrawn and the undertaking given by the petitioner after his retirement, at the time of recovering the pensionary benefits, is being pressed in operation, the judgment of the Hon'ble Supreme Court of India in ***Jagdev Singh's case (supra),*** will not be applicable rather the case of the petitioner will be covered by the judgment of Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra).***

The same question came up for consideration before a Co-ordinate Bench of this Court in CWP No. 8534 of 2016, which was decided on 16.12.2016 titled as ***Satish Manchanda and another Vs. State of Haryana and others***. This Court after considering the judgment of the Hon'ble Supreme Court of India in ***Jagdev Singh's case (supra)*** held as under :-

> *"12. As far as the undertakings are concerned then it fall for consideration can those be used against employees falling in direction (ii) of Rafiq Masih as interpreted in Jagdev Singh where the issue involved was of an employee opting out of revised pay scale while furnishing undertakings. Undertakings given at the time of pay revision are different in character from grant of an additional increment because in revision of pay scales employees reap benefits differently and, therefore, are allowed by rules to exercise options depending on variable factors such as dates when increments fall due and things like that. The additional increment here was given as a one-time measure but with a recurring effect increasing pay but not the pay scale and that is why undertakings given at the time of revision of pay scales would be binding as a person should not be seen to shift his stand according to the vagaries of pay revision. If direction (iii) operates then by the very nature of things direction (i) would be accompanying right and when the two are read together recoveries are in my view impermissible in law.*
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> *13. The undertakings given by the petitioners at Annex R-3/2 and R-3/3 [with the written statement] in 2008 was even when the additional increments wrongly conferred were being paid since 2003 till retirement. What occasioned the demand of furnishing undertaking by the petitioners was the pay revision in the year 2008 in implementation of the Shetty Commission when a decision was taken to give benefits retrospectively from 2003 and not 2005. In any case, at the time undertakings were given, parties did not contemplate that they will ever be used against them since the petitioners were allowed to retire peacefully without initiating any action for recovery. Once they passed the age of superannuation then to disturb them may be a travesty of justice. However, since the*

grant of additional increments was indisputably wrongful with no clarity on the subject prior to retirement, the benefit inflating the pay wrongly will not percolate to increase service pension, allowances and retiral benefits which are open to alteration. This order only makes impermissible recovery from 2003 to 2012 in view of the law in direction (iii) in Rafiq Masih."

Keeping in view the facts and circumstances of this case, the case of the petitioner is squarely covered in his favour even in respect of the undertaking.

As per the judgment in ***Rafiq Masih's case (supra),*** no recovery can be done from an employee after his retirement. In the present case, not only the increment extended to the petitioner w.e.f. 01.01.2006 was withdrawn after his retirement but even the recovery was being effected from him after the retirement, which is impermissible keeping in view the following terms given by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra):-***

> *"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:-*
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> *(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."*

Keeping in view the above, though no fault is to be found with regard to the withdrawal of increment given to the petitioner w.e.f. 01.01.2006 but any amount paid in excess to the petitioner, will not be recovered from the petitioner.

Petition is allowed in above terms.

March 09, 2022 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No