

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

(227)

CWP-25484-2017

Date of Decision : July 05, 2022

Ved Parkash Taneja

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harbans Lal Sharma, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the challenge is to the order dated 07.07.2017 (Annexure P-3) by which, a recovery of Rs.2,39,921/- has been done from the leave encashment to be paid to the petitioner.

Learned counsel for the petitioner argues that the petitioner, who was to attain the age of superannuation on 31.10.2015, was granted extension for a period of one year and was retired on 31.10.2016. During the extended period of service, the petitioner availed the ex-India leave for a period of one month but he fell sick and could not come back to join service within the time framed and thereafter, the petitioner was charge-sheeted for the said alleged misconduct on 12.05.2016. Ultimately, the said charge-sheet was dropped on 03.05.2017 and the retiral benefits were released to the petitioner including 300 days of leave encashment. Learned counsel for the petitioner submits that in July, 2017, the respondents decided to recover

a sum of Rs.2,39,921/- on the ground that the petitioner was not entitled for 300 days leave encashment as, the period spent by the petitioner on leave in excess of the granted leave during ex-India leave, is to be deducted from 300 days leave encashment admissible to the petitioner and the said amount has been ordered to be recovered from the petitioner, which cannot be done by the respondents keeping in view 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.***

Upon notice of motion, the respondents have filed the reply wherein, it has been stated that the petitioner was extended 300 days leave encashment inadvertently whereas, he was only entitled for leave encashment for a period of 177 days only keeping in view the fact that excess period spent by the petitioner while on ex-India leave is to be deducted from earned leave only.

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

Nothing has come on record that the order of recovery has been passed by issuing appropriate notice to the petitioner. Once, an amount of 300 days leave encashment was paid to the petitioner after his retirement, the same could not be recovered at the discretion of the respondents that too unilaterally. As nothing has been placed on record that the rules of natural justice was observed before passing the order of recovery of the excess payment or before effecting recovery of the amount in question, the recovery, being done from the petitioner cannot be sustained.

Even otherwise, in the year 2017 when the respondents passed the impugned order Annexure P-3 on 07.07.2017, the petitioner is a retired

employee. The recovery of the excess payment from a retired employee cannot be done keeping in view the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***. The relevant paragraph 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.”

The Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022***, has held that where an employee was not at fault with regard to the extension of benefit and there is no misrepresentation 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:-

“(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.”

In the present case, there was no misrepresentation on part of the petitioner when he was extended the benefit of leave encashment for a period of 300 days. That being so, the case of the petitioner is covered in his favour with regard to the recovery of the amount which is being ordered from the petitioner.

Keeping in view the settled principle of law noticed hereinbefore coupled with the facts of the present case, the prayer of the petitioner is allowed. The impugned order dated 07.07.2017 (Annexure P-3)

is set aside. In case, any recovery of the amount has been done from the petitioner, the same be refunded back to him within a period of two months from the receipt of copy of this order.

July 05, 2022*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes