

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

Sr. No.248

CWP No.25169 of 2018

Date of Decision: 19.05.2022

Panni Lal Kataria

.... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mohinder Pal, Advocate for the petitioner.

Mr. Narender Singh Baghel, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the challenge is to the order dated 18.01.2016 (Annexure P-9) by which, a sum of Rs.97,007/- has been recovered from the pensionary benefits of the petitioner.

Learned counsel for the petitioner argues that in the present case, the recovery of the excess amount on refixation of the pay of the petitioner could not have been done by the respondent keeping in view the judgment rendered by Hon'ble Supreme Court of India in the case of **State of Punjab and others versus Rafiq Masih (White Washer) (2015) 4 SCC 334.**

Learned counsel for the petitioner argues that once there was no misrepresentation on the part of the petitioner in refixation of his pay, recovery of the excess amount is not permissible keeping in view the facts and circumstance of the case coupled with the settled principles of law.

Upon notice of motion, the respondents have filed the reply and in the said reply, the respondents have stated that the petitioner was given the benefit of ACP after considering the length of service of the petitioner in the cadre of JE, from which post the petitioner had resigned so as to join as

Sub Divisional Engineer by way of direct recruitment in the year 2007. Learned counsel for the respondents submits that the said benefit was found to be given to the petitioner despite his ineligibility and therefore, the pay of the petitioner was refixed and ultimately, it was found that the petitioner has been paid an excess sum of Rs.97,007/-, which amount has rightly been recovered from the petitioner being public money.

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

In the present case, it is a conceded fact that recovery of excess amount was assessed and recovered by the respondent after refixing the salary of the petitioner. Though, at the time of refixation of the salary, the petitioner had only one month to go before he was to superannuate, hence the case of the petitioner is covered by the judgment of Hon'ble Supreme Court of India in Rafiq Masih (supra) that no recovery can be done from an employee who has either retired or has one year to go before the retirement. The relevant paragraph 12 of the said judgment reads as under:-

“It is not possible to postulate all situation 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 decision referred to herinabove, 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.”*

Further, after considering Rafiq Masih (supra), Hon'ble Supreme Court of India once again in Civil Appeal No.7115 of 2010 titled **Thomas Daniel versus State of Kerala and others**, decided on 02.05.2022, held that where benefit extended to an employee is being withdrawn on the ground that he was not entitled for the same but the employee had no role to play in the grant of the said benefit and there was no misrepresentation on the part of the employee concerned, the excess amount paid to an employee can not be recovered. The relevant paragraph of the said judgment reads as under:-

“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 circumstance of any particular case order for recovery of amount paid in excess.”

In the present case, the grant of ACP, which was found to be inadmissible to the petitioner, was extended to the petitioner by the respondents themselves without there being any misrepresentation on the part of the petitioner. Further on the date when the recovery was made, the petitioner had only one month to go before retirement and therefore, the case of the petitioner in respect of the recovery of the excess amount is covered in his favour keeping in view the settled principles of law mentioned hereinbefore.

Consequently, the prayer of the petitioner is allowed. The recovery of the amount from the pensionary benefits amounting to Rs.97,007/- is held to be bad in law and the same is accordingly quashed. Let the respondent refund the said amount to the petitioner within a period of two months from the receipt of copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

19.05.2022
Maninder

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