IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(208) **CWP-7888-2014**
Date of Decision : May 26, 2022

Avtar Singh **.. Petitioner**

Versus

Punjab State Power Corporation Limited and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. H.K. Brinda, Advocate, for the petitioner.

Mr. A.P.S. Sandhu, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the challenge is to the action of the respondent No.2 in effecting the recovery of Rs.2,95,613/- from the retiral benefits of the petitioner.

Learned counsel for the petitioner argues that the petitioner was appointed as Lower Division Clerk on 20.01.1982. Thereafter, the petitioner was appointed as a Steno Typist on 25.07.1983 and in the said order of appointment, there was no condition of the passing of the second language typing test. Petitioner continued working as Steno Typist till the date of his retirement i.e. 30.04.2013. After the petitioner attained the age of superannuation, the respondents sent the case of the petitioner for the release of the pensionary benefits but, rather than releasing the pensionary benefits, the respondents refixed the salary of the petitioner on the ground that the petitioner was required to pass a typing test in second language, which he did not passed and hence, became ineligible for the grant of increment and therefore, the petitioner was paid an excess amount of Rs.2,95,613/-. The said amount was recovered from the gratuity of the petitioner. The said act is under challenge in the present writ petition.

Upon notice of motion, the respondents have filed the reply. In the reply, it has been mentioned that the Steno Typists, who were recruited after 01.10.1982, were compulsorily required to pass the second language typing test and as the petitioner joined after the said date and did not pass the second language typing test, the benefit of the time bound promotional scale extended to the petitioner was not correct and hence, the pay of the petitioner was refixed after the retirement and the recovery of the excess amount paid was done from him.

Apart from the reply, the respondents have also filed an affidavit on the asking of the Court wherein, it has been conceded by the respondents that no such condition of passing of the second typing test was imposed upon the petitioner at the time of appointment of Steno Typist and the petitioner was not asked to clear the said typing test in second language during the service career.

Learned counsel for the petitioner argues that in the present case, only grievance which the petitioner is raising is with regard to the recovery of the excess amount which has been done from the retiral benefits of the petitioner and the petitioner is not challenging the refixation of his salary.

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

In the present case, the petitioner is not challenging the refixation of his salary by withdrawing certain benefits which were given to him while in service.

The question of law with regard to the recovery from a retired employee has already been 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,*** according to which, no recovery can be done from a class 3 and class 4 employee and that too after the retirement. Further, as per the judgment in ***Rafiq Masih's case (supra),*** no recovery can be done after withdrawing a benefit which an employee continue to get for a period of five years before the same was withdrawn. 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:-*
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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."

Learned counsel for the respondents has not been able to point out that the case of the petitioner is not covered in his favour keeping in view the judgment in ***Rafiq Masih's case (supra).*** The petitioner had already retired by the time his pay was fixed and the petitioner was working on a class 3 post of Steno Typist on the date of his retirement.

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 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:-

"(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."

Keeping in view the above, the recovery which has been done from the petitioner of the excess amount by the respondents after refixing his salary, is not in accordance with law and the same is accordingly set aside.

Learned counsel for the petitioner submits that the petitioner retired from service on attaining the age of superannuation on 30.04.2013 but the pensionary benefits were extended to him only in March, 2014. Learned counsel for the petitioner further submits that the there was no impediment in release of the pensionary benefits of the petitioner and therefore, keeping in view the settled principle of law settled by the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468,*** in case, the retiral benefits to an employee are not released within a period of two months in case there is no impediment, the employee is entitled for the grant of interest. The relevant paragraph of said judgment is as under:-

"Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months front the date of retirement which time limit has been laid down by the Apex

Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."

Further, a Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."

Learned counsel for the respondents has not brought to the notice of this Court any relevant fact, which gave jurisdiction to the respondents to withhold the pensionary benefits of the petitioner.

In the present case, it is a conceded position that the pensionary benefits were released to the petitioner much after two months of his retirement, hence, the petitioner is held entitled for the grant of interest on the delayed release of the pensionary benefits as the delay in release of the pensionary benefits is entirely attributed upon the respondents and the petitioner is entitled for the interest on the delayed release of the pensionary benefits keeping in view the settled principle of law stated hereinbefore.

In view of the above, prayer of the petitioner is accepted. Petitioner is held entitled for the interest @ 6% per annum from the date the retiral benefits became due till the actual payments were released. Let this order be complied with within a period of two months from the receipt of copy of this order.

The present writ petition is allowed in above terms.

May 26, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No