

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

CWP-27224-2017

Date of decision : May 23, 2022

Jogi Ram

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ashwarya Bajaj, Advocate for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the grievance of the petitioner is that a sum of Rs.1,72,241/- has been deducted from his pensionary benefits so as to adjust the excess payment made to him. As per the facts mentioned in the petition, the petitioner who was working as Junior Engineer in the respondent-Department since 01.02.1977, retired from service on 31.01.2012. After retirement, on 18.10.2012, the salary of the petitioner was re-fixed and respondent calculated that a sum of Rs.1,72,400/- has been paid to the petitioner over and above to his entitlement. The said amount has been recovered from the pensionary benefits of the petitioner, which action of the respondents is under challenge in the present petition.

Upon notice of motion, the respondents have filed reply. In the reply, the respondents have mentioned that an additional increment was wrongly granted to the petitioner in the year 1992 and the said fact came to the notice when the case of the petitioner was sent to the office of Accountant General qua the approval of his pension.

As per the respondents, the said benefit was withdrawn and the pay of the petitioner was re-fixed in October, 2012 and after re-fixation of the salary it was found that the petitioner has been paid an excess amount to the tune of Rs.1,72,241/-, which amount has been adjusted from his retiral benefits.

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

In the present case, the petitioner retired from service on 31.01.2012. It is a conceded position that the pay of the petitioner was re-fixed after his retirement. Nothing has come on record that by fixing the pay of the petitioner, the respondents observed the rules of natural justice, which act itself shows that the re-fixation of the pay of the petitioner was bad in law. Though, the said re-fixation is not under challenge but only the recovery is under challenge in the present petition, which recovery could not have been done by the respondents, keeping in view the settled principle of law as settled by Hon'ble the Supreme Court in '**State of Punjab and others vs Rafiq Mashih (White Washer) etc.**', 2015(2) SCC (Civil) 608 SC.

The relevant paragraph 12 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.”*

A bare perusal of the above reproduction shows that no recovery can be done from a retired employee. In the present case, not only the petitioner had retired by the date when the salary of the petitioner was re-fixed but even the excess payment was recovered from the pensionary benefits of the petitioner which, is not permissible, keeping in view the ***Rafiq Mashih's case (supra)***.

Learned counsel for the respondents has not been able to show to this Court that the case of the petitioner is not covered by the ***Rafiq Mashih's case (supra)*** in his favour.

Keeping in view the above, the recovery of Rs.1,72,241/- is held to be bad in law and the same is quashed. Let the recovered amount be refunded to the petitioner within a period of two months from the receipt of the copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

May 23, 2022

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

Yes