

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

225

CWP-26096-2018

Date of Decision :20.04.2022

Sharad Kumar

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. D.R. Bansal, Advocate for  
Mr. K.L. Dhingra, Advocate for the petitioner.

Mr. Padam Kant Dwivedi, Advocate for the respondents.

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**Harsimran Singh Sethi, J. (Oral)**

Learned counsel for the petitioner argues that in the present writ petition, a sum of Rs.1,67,265/- has been withheld by the respondents from the pensionary benefits (leave encashment) of the petitioner on the ground that the pay of the petitioner was wrongly fixed w.e.f. 1.1.2006. Learned counsel for the petitioner submits that as per the settled principle law settled by the Hon'ble Supreme Court of India in ***State of Punjab & Others vs Rafiq Masih (White Washer) etc (2014) 8 SCC 883***, no recovery can be done from a retired employee or with regard to the benefit which was being paid to an employee for a period of five years before the same was withdrawn, therefore, the recovery which was made by the respondents is

bad in law.

Learned counsel for the respondents submits that in the present case judgment of Rafiq Masih's case (supra) is not applicable and the case of the petitioner is covered by the judgment passed in **High Court of Punjab and Haryana and others vs. Jagdev Singh 2016 (14) SCC 267** according to which, where an employee has given an undertaking at the time of receiving benefits, recovery can be made.

At this stage learned counsel for the petitioner submits that even otherwise no order of recovery can be passed against the petitioner without giving due opportunity of hearing to him especially, when salary of the employee is being reduced by the respondents.

Learned counsel for the petitioner submits that any order penalizing an employee is to be passed after giving due opportunity of hearing to an employee. In the present case, no opportunity of hearing was afforded to the petitioner before reducing his salary and consequent recovery.

Learned counsel for the respondents submits that mistake of wrongly fixing of the pay of the petitioner was discovered at the time of retirement of the petitioner and the straightway pay of the petitioner was reduced without observing the rule of natural justice and therefore, the said order of refixation of pay of the petitioner may kindly be treated as withdrawn and respondents will pass a fresh order after giving due opportunity of hearing to the petitioner.

Keeping in view the above, present petition is disposed of with the observation that though, impugned order of refixation of the salary of the petitioner has been treated to be withdrawn but respondents will be at

liberty to pass a fresh order in accordance with law by following natural rule of justice.

April 20, 2022  
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(HARSIMRAN SINGH SETHI)  
JUDGE

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