IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216) **CWP-7695-2016**
Date of Decision : July 06, 2022

Surinder Kumar **.. Petitioner**

Versus

State of Punjab and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Dheeraj Mahajan, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Mr. B.S. Jaswal, Advocate, for respondent No.4.

HARSIMRAN SINGH SETHI J. (ORAL)

Present petition has been filed with a prayer that the pensionary benefits for which the petitioner is entitled for, be released forthwith as there is no impediment in the release of the pensionary benefits.

The further challenge is to the order dated 09.02.2016 (Annexure P-2) by which, an amount of Rs.1,74,372/- is sought to be recovered.

As per the averments made in the petition, the petitioner retired from the post of Panchayat Secretary on attaining the age of superannuation on 30.11.2011. At the time when the petitioner retired, there was no impediment in the release of the pensionary benefits but still, the pensionary benefits were released after a delay as the CPF amount as well as leave encashment was released to the petitioner on 18.06.2012 and the gratuity was released to the petitioner on 08.04.2013. The petitioner was not paid the pension. Thereafter, the respondents passed an order on 09.02.2016 (Annexure P-2), after more than four and half years of the retirement, that the salary of the petitioner was wrongly fixed while he was in service as he was given the benefit of adhoc service while granting increment as well as the benefit of assured career progression scheme, which benefits were not permissble, hence, a sum of Rs.1,74,372/- was sought to be recovered.

In the present petition, the prayer of the petitioner is for the release of the pension as well as interest on the delayed release of the pensionary benefits and also for quashing of the order dated 09.02.2016 (Annexure P-2) by which, an amount of Rs.1,74,372/- was sought to be recovered.

After notice of motion, the respondents have filed the reply wherein, the respondents have conceded the fact that there was no impediment in the release of the pensionary benefits of the petitioner. The date on which the pensionary benefits were released, the detail of which have been given in the preceding paragraph, have also been conceded. As far as the recovery is concerned, the respondents have maintained their stand that the petitioner was granted the benefit of increment wrongly by taking into consideration the adhoc service, which is impermissible as per law and after refixing the salary, it was found that the the petitioner has been given excess payment to the tune of Rs.1,74,372/-, which being public money is liable to the recovered.

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

As far as the first claim of the petitioner is concerned for the grant of interest on the delayed release of the pensionary benefits, the same is covered by the judgment of the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others*, *1997(3) SCT 468,*** according to which, an employee is entitled to receive the pensionary benefits within a period of two months of the retirement in case, there is no impediment failing which, employee is entitled for the grant of interest. The relevant paragraph of the 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."*

In the present case, the delay in release of the pensionary benefits is beyond two months and there was no impediment in the release of the benefits within a period of two months of the retirement. That being so, the petitioner is entitled for the grant of interest on the delayed release of the pensionary benefits @ 6% per annum from the date, payment became due till the date same was actualy released to the petitioner.

Further, nothing has been brought to the notice of this Court as to why, the petitioner is being paid the provisional pension. There are no disciplinary proceedings pending against the petitioner and it is only under those circumstances, where disciplinary proceedings or criminal proceedings are pending, the department can resort to the payment of provisional pension. That being so, the respondents are directed to release the regular pension to the petitioner forthwith without any further delay along with the arrears if any.

As far as the question of recovery of an amount of Rs.1,74,372/- as proposed vide order dated 09.02.2016 (Annexure P-2) is concerned, the same is also contrary to the settled principle of law. As per 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,*** no recovery can be done from a retired employee. Further, as per the judgment in ***Rafiq Masih's case (supra),*** if any benefit, which an employee continued to get for a period of five years, before it is withdrawn, no recovery can be done. The relevant paragraph of the 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."

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."

The case of the petitioner is squarely covered by the said decision.

Keeping in view the above, the recovery being sought to be done from the petitioner is not permissble and the said recovery is set aside. The prayer of the petitioner is allowed with regard to the grant of interest on the delayed release of pensionary benefits as well as for setting aside the order for recovering the amount as proposed vide order dated 09.02.2016 (Annexure P-2). The amount of interest be calculated within a period of two months from the receipt of copy of this order and the amount so calculated be released to the petitioner within a period of one month thereafter.

The present writ petition is allowed in above terms.

July 06, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes