IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(221) **CWP-3800-2017**
Date of Decision : May 18, 2022

Inderpal Singh **.. Petitioner**

Versus

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

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. P.S. Khurana, Advocate, for the petitioner.

Ms. Anju Sharma Kaushik, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the grievance of the petitioner is that the respondents have recovered a sum of Rs.1,78,164/- from the pensionary benefits of the petitioner after refixing the salary of the petitioner.

As per the facts mentioned in the petition, the petitioner attained the age of superannuation on 31.01.2014 after which the petitioner was granted extension for a period of two years and ultimately, the petitioner retired on 31.01.2016. After the retirement, the retiral benefits of the petitioner were calculated and the petitioner was released the gratuity in December, 2016 amounting to Rs.8,21,836/- by deducting an amount of Rs.1,78,164/-. The said action of the respondents of deducting amount of Rs.1,78,164/- is under challenge in the present petition.

After notice of motion, the respondents have filed the reply wherein, it has been mentioned that the case of petitioner was submitted to the Accountant General, Punjab for approving the pensionary benefits but the same was returned with the remark that the petitioner has been given a grade pay of Rs.3800/- which is not correct as the petitioner was entitled for the grade pay of Rs.3600/- after which objection, the pay of the petitioner was refixed w.e.f. 01.01.2006 onwards and it was found that the petitioner has been paid excess amount of Rs.1,78,164/-, which amount has been deducted from the gratuity of the petitioner.

Learned counsel for the respondents submits that as the petitioner was not entitled for the said amount being the public money, the same has rightly been recovered from the pensionary benefits of the petitioner especially in view of the fact that the petitioner at the time of retirement had given an undertaking, a copy of which has been attached as Annexure R-3 that any excess amount paid to the petitioner in terms of GPF and DCRG earned leave, can be recovered from him.

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

In the present case, the only question which arise is whether, the recovery of Rs.1,78,164/-, which has been done from the gratuity of the petitioner, could have been validly done or not by the respondents keeping in view the settled principle of law.

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,*** held that no recovery can be done from the retired employee. In the present case, the recovery was done from the petitioner in the month of December, 2016 after the petitioner already retired from service on 31.01.2016. That being so, the judgment in ***Rafiq Masih's case (supra),*** will come to the rescue of the petitioner that no recovery could have been done from the retired employee.

Learned counsel for the respondents is relying upon the undertaking Annexure R-3 to contend that the judgment in ***Rafiq Masih's case (supra),*** will not be applicable rather the claim of the petitioner will be covered by the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No. 3500 of 2006 titled as High Court of Punjab & Haryana and others Vs. Jagdev Singh, decided on 29.07.2016***, according to which, where an employee has given an undertaking, the said undertaking is to be complied with and the recovery of the excess amount paid is permissible.

The question which now arise is whether, on the basis of undertaking i.e. Annexure R-3 which was given by the petitioner at the time of the retirement, the recovery of the amount of Rs.1,78,164/- can be done from the gratuity of the petitioner or not.

By considering the judgment in ***Jagdev Singh's case (supra)***, a Coordinate Bench of this Court while deciding ***CWP No. 8534 of 2016 titled as Satish Manchanda and another Vs. State of Haryana and others on 16.12.2016***, has held that the undertaking, which is being pressed, should have been given at the time when the benefit was extended to an employee, which benefit is sought to be withdrawn so as to effect the recovery. The relevant paragraph of the said judgment is as under:-

> *"12. As far as the undertakings are concerned then it fall for consideration can those be used against employees falling in direction (ii) of Rafiq Masih as interpreted in Jagdev Singh where the issue involved was of an employee opting out of revised pay scale while furnishing undertakings. Undertakings*

given at the time of pay revision are different in character from grant of an additional increment because in revision of pay scales employees reap benefits differently and, therefore, are allowed by rules to exercise options depending on variable factors such as dates when increments fall due and things like that. The additional increment here was given as a one-time measure but with a recurring effect increasing pay but not the pay scale and that is why undertakings given at the time of revision of pay scales would be binding as a person should not be seen to shift his stand according to the vagaries of pay revision. If direction (iii) operates then by the very nature of things direction (i) would be accompanying right and when the two are read together recoveries are in my view impermissible in law.

13. The undertakings given by the petitioners at Annex R-3/2 and R-3/3 [with the written statement] in 2008 was even when the additional increments wrongly conferred were being paid since 2003 till retirement. What occasioned the demand of furnishing undertaking by the petitioners was the pay revision in the year 2008 in implementation of the Shetty Commission when a decision was taken to give benefits retrospectively from 2003 and not 2005. In any case, at the time undertakings were given, parties did not contemplate that they will ever be used against them since the petitioners were allowed to retire peacefully without initiating any action for recovery. Once they passed the age of superannuation then to disturb them may be a travesty of justice. However, since the grant of additional increments was indisputably wrongful with no clarity on the subject prior to retirement, the benefit inflating the pay wrongly will not percolate to increase service pension, allowances and retiral benefits which are open to alteration. This order only makes impermissible recovery from 2003 to 2012 in view of the law in direction (iii) in Rafiq Masih."

In the present case, undertaking Annexure R-3 was taken at the time of the retirement and not at the time of fixation of the salary of the petitioner in the year 2006, which benefit was being withdrawn by the respondents so as to effect the recovery and therefore, Anneuxre R-3 i.e. the undertaking given by the petitioner will not come to the rescue of the respondents to recover the excess payment made to the petitioner to the tune of Rs.1,78,164/- and the judgment in ***Rafiq Masih's case (supra)*** will be applicable in this case and according to the said principle of law, recovery of excess amount paid is not recoverable if an employee has retired or when a benefit has been withdrawn after a period of five years.

Keeping in view the above, recovery of Rs.1,78,164/- done from the petitioner is held to be bad in law and is accordingly set aside. The respondents are liable to refund the said amount to the petitioner. Let the said amount be refunded to the petitioner within a period of two months from the receipt of copy of this order.

May 18, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No