215

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8531 of 2017
Date of Decision : 06.05.2022

Jagtar Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anurag Goyal, Advocate with
Mr. Sandeep Vermani, Advocate
for the petitioner.

Ms. Kanika Sachdeva, AAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed for quashing of the order dated 08.01.2015 (Annexure P-10) by which, the claim of the petitioner for the grant of grade pay of Rs.3000/- has been rejected and the excess amount paid to the petitioner has been recovered from the pensionary benefits of the petitioner.

The facts leading to the filing of the present petition are that the petitioner joined as a Canal Patwari in the year 1976 and retired as a Head Revenue Clerk on 31.07.2012. After the retirement, the respondents, while fixing the pensionary benefits, found that the pay of the petitioner was wrongly fixed starting from 01.01.2006 onwards, as, instead of the grade pay of Rs.2800/-, he was given a grade pay of Rs.3000/-, which according to the respondents was beyond his entitlement, keeping in view the pay scale which the petitioner was getting at the time of retirement.

The respondents re-fixed the pay of the petitioner by reducing the grade pay from Rs.3000/- to Rs.2800/- and recovered the excess amount paid to the petitioner from his pensionary benefits. This re-fixation and the recovery was done by the respondents on 31.12.2012 i.e. after the retirement of the petitioner. The said action of the respondents was challenged by the petitioner by filing CWP No.4094 of 2014, which petition was disposed of by this Court and the respondents were directed to re-consider the matter especially whether, a sum of Rs.96,290/- recovered from the pensionary benefits of the petitioner, could have been recovered after the retirement of the petitioner. The respondents considered the claim of the petitioner and ultimately passed a speaking order on 08.01.2015 wherein, the respondents held that the petitioner was not entitled for the grade pay of Rs.3000/- but was only entitled for grade pay of Rs.2800/- and the excess amount is recoverable from the petitioner. The said order is under challenge in the present petition.

After notice of motion, the respondents have filed the reply wherein, it has been mentioned that keeping in view the pay scale, which was admissible to the petitioner, the petitioner was entitled for a grade pay of Rs.2800/- whereas, while fixing the pay of the petitioner on 01.06.2012 i.e. immediately before the retirement of the petitioner, the same was erroneously fixed by giving him a grade pay of Rs.3000/- instead of Rs.2800/- and the said mistake was rectified vide order dated 31.12.2012 and therefore, the excess amount which is a public money, has rightly been recovered from the pensionary benefits of the petitioner.

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

Learned counsel for the petitioner submits that in the impugned order dated 08.01.2015 (Annexure P-10), the respondents themselves have mentioned at one point that the petitioner was entitled for the grade pay of Rs.3000/- though, at the end of the impugned order, it is mentioned that the entitlement of the petitioner was only Rs.2800/- as grade pay and therefore, the contradictory stand has been taken by the respondents in the impugned order which should go in favour of the petitioner.

With regard to the above mentioned arguments of learned counsel for the petitioner, in case when, the impugned order is read in entirety, there is a typographical error in the order. Rather than saying that the petitioner is 'not' entitled, it has been mentioned that the petitioner was entitled for a grade pay of Rs.3000/-. At the end of the impugned order, it has been correctly mentioned by the respondents that keeping in view the pay scale admissible to the petitioner, the grade pay, according to the notification, the entitlement of the petitioner was Rs.2800/- and not Rs.3000/-. Therefore, a typographical error in the order, cannot come to the rescue of the petitioner so as to claim the grade of Rs.3000/-. Learned counsel for the petitioner further argues that in any case, keeping in view 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 ordered after the retirement and that too after re-fixing the salary. With regard to the arguments that no recovery can be done from a retired employee and therefore, the recovery of Rs.96,290/-, could not have been done. In ***Rafiq Masih's case (supra)***, the Hon'ble Supreme Court of India has categorically held that no recovery can be done from a retired employee or an employee who is nearing his/her retirement. The relevant paragraph No.12 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."

In the present case, not only the pay of the petitioner was re-fixed after his retirement in December, 2012 but the recovery has been done subsequent to that order which is impermissible. Nothing has been pointed out by the respondent-State as to how, the recovery could have been effected from the petitioner keeping in view the settled principle of law. Not only in ***Rafiq Masih's case (supra),*** even the earlier judgments of the Hon'ble Supreme Court of India such as '**Chandi Prasad Uniyal and others vs. State of Uttarakhand and others**' 2012 (4) SCT 277 as well as '**Budh Ram and others vs. State of Haryana and others**' 2009 (3) SCT 333, '**Sahib Ram Verma vs. State of Haryana**' 995 (1) SCT 668, the recovery cannot be done in case, there is no misrepresentation on behalf of an employee while claiming the said benefit.

Keeping in view the above, the recovery which has been done from the petitioner is contrary to the settled principle of law and the same is held to be bad in law. The respondents are directed to refund the recovered amount of Rs.96,290/- to the petitioner within a period of two months from the date of receipt of certified copy of this order.

This petition stands allowed in above terms.

May 06, 2022 **(HARSIMRAN SINGH SETHI)**
rittu **JUDGE**

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