

215

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-850-2018
Date of Decision: 31.03.2022**

Jatinder Kumar Khara

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harish Sharma, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed for quashing of the order dated 07.08.2017 (Annexure P-6) passed by respondent No.2, whereby a sum of Rs.1,92,699/- has been recovered from the retiral benefits of the petitioner.

Learned counsel for the petitioner submits that the petitioner joined the respondent-Department as a Junior Engineer on 12.02.1980 and thereafter he was promoted to the rank of Sub-Divisional Officer, at which post, he attained the age of superannuation on 31.07.2015. The petitioner was granted the extension in service for a period of one year and after availing the same, he retired on 31.07.2016.

Learned counsel for the petitioner argues that while fixing the pensionary benefits of the petitioner, the respondents realized that one increment, w.e.f. 01.01.1986, was wrongly extended to him, though he was not eligible for the same, therefore, the amount of the said increment was then deducted from the salary of the petitioner by the respondents. Thereafter, after retirement of the petitioner, the respondents found that the petitioner has been paid an excess amount of Rs.1,92,699/-, which needs to be recovered from him. Hence, the retiral benefits of the petitioner were ultimately released to him after deducting the said amount of Rs.1,92,699/-, which order (Annexure P-6) is under challenge in the present petition.

Learned State counsel submits that at the time when the petitioner's pay was fixed, i.e. w.e.f 01.01.1986, the said order envisaged that in case any error is found at a later stage, the same will be rectified and the recovery can be effected from the employee. Learned State counsel further submits that as the petitioner never objected to the said condition, therefore once at a later stage, when the benefit of grant of one increment to the petitioner was found inadmissible, the same can be recovered from him after re-fixation of his pay and in the facts and circumstances of this case, there is a deemed undertaking given by the petitioner for the recovery of the excess payment received by him.

Learned State counsel further submits that even otherwise at the time when the petitioner retired, he had given an undertaking that in case his pay is re-fixed, he will have no objection with regard to recovery of the excess amount paid to him. Therefore in the present case, there are two undertakings, which will come in the way of the petitioner while seeking refund of the amount of Rs.1,92,699/-, which has been recovered

from him by the respondents.

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

It is a settled principle of law laid down by the Hon'ble Supreme Court of India while passing its judgment in “*State of Punjab and others Vs. Rafiq Masih (White Washer) etc.*”, 2015(1) S.C.T., 195, that no recovery can be effected from an employee after his retirement. Further, as per the said judgment, in case any benefit is extended to an employee continuously for a period of five years, prior to withdrawal of the said benefit, the recovery of the excess amount cannot be effected. The only exception is that in case, an employee has given an undertaking at the time of receiving the benefit, the same is to be applied and the Department can effect recovery of the excess amount in lieu of the said undertaking.

In the present case, the benefit of one increment was extended to the petitioner in the year 2013 but w.e.f. 01.01.1986, with a clear condition that in case the said benefit is found inadmissible at a later stage, recovery of the amount paid under the said benefit can be effected by the respondents and the petitioner never objected to the said condition, which means that there was an implied acceptance of the same by the petitioner, which has to be treated as an undertaking for all intents and purposes.

That being so, once the petitioner has undertaken to refund the excess amount paid to him, in case the same is found inadmissible at a later stage, decision of the Hon'ble Supreme Court of India passed in its judgment in “*High Court of Punjab and Haryana Vs. Jagdev Singh*”, decided on 29.07.2016, will be applicable upon the petitioner, which has been passed after taking into consideration the judgment passed in **Rafiq**

Masih's case (supra). The relevant paragraphs of the judgment passed in **Jagdev Singh's case** (supra) is as under:-

“ - x - x -

9. *The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.*

10. *In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc1. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

- x - x -”

Keeping in view the above, the recovery of an amount of Rs.1,92,699/- from the retiral benefits of the petitioner by the respondents, vide order dated 07.08.2017 (Annexure P-6), cannot be faulted with.

The next question which has been raised by learned counsel for the petitioner before this Court is that though the petitioner had retired in July, 2016 but the pensionary benefits were released to him only in the year 2018, therefore, keeping in view the judgment passed by the Full Bench of this Court in **“A.S. Randhawa Vs. State of Punjab and others”, 1997(3) SCT 468**, as there is an inordinate delay in release of the pensionary benefits of the petitioner, he is entitled for the grant of interest on the said delayed release of payments.

It is a settled principle of law laid down by the Full Bench of this Court while passing judgment in **A.S. Randhawa's case** (supra) that an employee who has not been released the pensionary benefits within a period

of two months from superannuation becomes entitled for the grant of interest for the delay in releasing of the pensionary benefits. The relevant paragraph of the said judgment is as under:-

“ - x - x -

8. *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 retiree 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 from 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. ...*

- x - x - ”

Further, a co-ordinate Bench while passing order in **CWP-15867-2001** titled as **“J.S. Cheema Vs. State of Haryana and others”**, decided on 20.11.2013, held that even where an amount has been retained by a Department, which actually belonged to the employee, and has used the same to its benefit, and the employee has suffered prejudice due to the non-release of the said amount, the employee becomes entitled for the grant of interest, so as to compensate him for the said prejudice. The relevant paragraph No.5 of the judgment is as under:-

“ x -- x -- x

In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.

x -- x -- x”

In the present case, the pensionary benefits of the petitioner were only released to him in March, 2018. Nothing has been brought to the notice of this Court by the respondents either in the reply or during the arguments that there was any impediment in releasing the pensionary benefits of the petitioner. That being so, the delay in release of the pensionary benefits of the petitioner is attributed upon the respondents only, which makes the petitioner entitled for the grant of interest on the said delayed release of payments keeping in view the laws cited hereinbefore in **A.S. Randhawa's case** (supra) and **J.S. Cheema's case** (supra).

In view of the above, the petitioner is held entitled for the grant of interest at the rate of 6% per annum on the delayed release of the pensionary benefits, from the date the said amount became due till the date of actual release of the same to him.

Let the calculation of the interest under this order be done

within a period of two months from the date of receipt of the copy of this order and the amount so calculated be released in favour of the petitioner within a period of next one month.

Allowed in above terms.

31.03.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes