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# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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**Date of Decision: 19.05.2022**

**(I) CWP-26651-2019**

Raj Kumar

..... Petitioner

Versus

The PEPSU Road Transport Corporation and another

..... Respondents

**(II) CWP-27044-2019**

Krishan Lal

..... Petitioner

Versus

State of Punjab and others

..... Respondents

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

Present: Mr. Gunjeet Brar, Advocate, for
Mr. Vikas Singh, Advocate,
for the petitioner (in CWP-26651-2019).

Mr. Sushil Saini, Advocate,
for the petitioner (in CWP-27044-2019).

Ms. Ambika Bedi, AAG, Punjab.

Mr. Anupam Singla, Advocate,
for the respondents (in CWP-26651-2019).

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**<u>HARSIMRAN SINGH SETHI J.</u> (ORAL)**

Vide this common order, two writ petitions, the details of which have been mentioned in the heading, are being disposed of, as the common question of law arises in both of them and for the purpose of passing this order, the facts are being taken from CWP-26651-2019.

The present petition has been filed challenging order dated 22.10.2014 (Annexure P-3), passed by respondent No.2, vide which recovery of Rs.78,351/- has been ordered and the said recovery has been done from the gratuity amount of the petitioner.

Learned counsel for the petitioner submits that the petitioner was appointed on a Class IV Post in the respondent-Department on 01.04.1979. Learned counsel further submits that the petitioner was thereafter promoted as an Assistant Cashier in the respondent-Department, and while working on the said post, he retired on 31.03.2014. It is further submitted that after retirement of the petitioner, he received a notice on 14.10.2014 from the respondent-Department, stating that earlier, pay of the petitioner was wrongly fixed, which pay needs to be revised by the respondent-Department. Learned counsel for the petitioner further submits that after retirement of the petitioner, respondent re-fixed the salary of the petitioner and recovered an excess amount of Rs.78,351/- from gratuity amount of the petitioner vide order dated 22.10.2014 (Annexure P-3), which order of recovery of the excess amount paid is under challenge in the present petition.

In CWP-27044-2019, the reason for recovery of the excess amount of Rs.1,88,441/- from the leave encashment of the petitioner is also on account of wrong fixation of pay on clerical ground by the Department concerned.

In CWP-26651-2019, learned counsel for the respondents submits that though it is a conceded position that pay of the petitioner was re-fixed after his retirement and due to the said re-fixation, it was discovered that the petitioner was paid a sum of Rs.78,351/- in excess of his entitlement, but as the petitioner had earlier given in writing with regard to the recovery of any excess amount paid to him by the respondent-Department, therefore, the said recovery was done. Learned counsel for the respondents further submits that his oral submission in this regard be taken on record as he does not intend to file any written reply.

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

Once it is a conceded fact that pay of the petitioner was revised after his retirement and the recovery was done from his retiral benefits, the said action of the respondent-Department is not permissible keeping in view the settled principle of law as laid down by the Hon'ble Supreme Court of India, while passing judgment in ***"State of Punjab and others Vs. Rafiq Masih (White Washer) etc.", 2015(1) S.C.T., 195***, according to which, no recovery can be effected from a retired employee, especially from an employee, who was working on the Class III or Class IV post, and further by withdrawing the benefit, which an employee continued to get for a period of five years before the withdrawal of the said benefit. The relevant paragraph No.12 of the said judgment is as under:-

> *" - x - x -*
>
> *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:-*

*(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.*

*- x - x -".*

A bare perusal of the above reproduction would show that no recovery of the excess amount can be done from an employee, who has already retired from service.

The said recovery is also contrary to the judgment of the Supreme Court of India, passed in **Civil Appeal No.7115 of 2010**, titled as ***"Thomas Daniel Vs. State of Kerala and others"***, decided on 02.05.2022, according to which, where there is no misrepresentation on part of the employee in seeking any relief, the recovery of excess amount cannot be done. In the present case, there is no allegation that the petitioner played any mischief in getting the higher pay than his entitlement. That being so, no recovery can be done from the petitioner keeping in view the settled principle of law laid down in **Thomas Daniel's case** (supra). As far as the averment of the respondents with regard to the fact that the petitioner had earlier given in writing for recovery of any excess amount paid to him by the respondent-Department, therefore, he cannot file the present writ petition is concerned, no estoppel lies against the settled principle of law. Once a law authorizes any benefit, the said benefit cannot be denied on the ground of any estoppel.

Keeping in view the above, the present petitions are allowed. The recovery orders dated 22.10.2014 (Annexure P-3) in CWP-26651-2019 and 16.05.2019 (Annexure P-22) in CWP-27044-2019 are set aside and the amounts, so recovered from the petitioners, in view of the said recovery orders, are directed to be refunded back to them within a period of two months from the date of receipt of the copy of this order.

Photocopy of this order be placed on the file of CWP-27044-2019.

**19.05.2022** **(HARSIMRAN SINGH SETHI)**
*Apurva* **JUDGE**

1. Whether speaking/reasoned : Yes
2. Whether reportable : No