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

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CWP-27045-2019
Date of Decision: 30.03.2022

Kamlesh Rani

..... Petitioner

Versus

Punjab Water Resources Management and Development Corporation Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vinod K.Kaushal, Advocate, for the petitioner.

Mr. Aman Sharma, Advocate, for respondents No.1, 2, 4 and 5.

Mr. Amitoj Singh Dhaliwal, DAG, Punjab.

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

The present petition has been filed challenging the order dated 07.08.2014 (Annexure P-1), vide which an amount of Rs.1,56,849/- has been recovered from the petitioner by the respondents.

Learned counsel for the petitioner argues that after the petitioner retired as a Senior Assistant on 31.03.2011, while computing pensionary benefits of the petitioner, an increment which was extended to the petitioner, w.e.f. the year 2006, was withdrawn on the ground that the same was wrongly extended to her. After withdrawing the said benefit, it was discovered that an amount of Rs.1,74,097/- has already been paid in excess to the petitioner, which was then recovered from her pensionary benefits.

Learned counsel for the petitioner argues that keeping in view the judgment of the Hon'ble Supreme Court of India passed in ***"<u>State of Punjab and others Vs. Rafiq Masih (White Washer) etc.</u>", 2015(1) S.C.T.,***

195, the said recovery of the excess amount from the petitioner is illegal. Further prayer of the petitioner is that though the petitioner retired on 31.03.2011 but as his pensionary benefits were released after an inordinate delay, the petitioner is entitled for the grant of interest on the said delayed release of payments.

Upon notice of motion, respondents have filed a reply, wherein they have stated that salary of the petitioner was fixed, w.e.f. 01.01.2006, upon revision of the pay scale, and at the relevant time, the petitioner had given an undertaking that in case her pay is wrongly fixed, the excess amount, if any, can be recovered from her salary, therefore, the judgment passed by the Hon'ble Supreme Court of India in the case of ***"High Court of Punjab and Haryana Vs. Jagdev Singh"***, decided on 29.07.2016, is applicable upon the case of the present petitioner, according to which, where an employee has given an undertaking at the time of getting the benefit, then the employee is liable to refund the amount, in case it is established that the excess amount was wrongly paid to him/her, which amount was beyond his/her entitlement, and the judgment passed in **Rafiq Masih's case** (supra) is not applicable in the present case.

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

Though as per the judgment passed by the Hon'ble Supreme Court of India in **Rafiq Masih's case** (supra), no recovery can be effected from a retired employee, who is working on Class 3 or 4 post, the Hon'ble Supreme Court of India in **Jagdev Singh's case** (supra) by taking into consideration the judgment passed in **Rafiq Masih's case** (supra) held that where an employee was extended a benefit and was later on found not entitled for the said benefit, the Department is well within its jurisdiction to recover the said excess amount after the withdrawal of the inadmissible benefit. The relevant paragraph of the said judgment 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.*
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> *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:*
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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." (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 -"

In the present case, it is a conceded position that when the pay of the petitioner was fixed, w.e.f. 01.01.2006, she was extended the benefit of one increment, though according to the Rules, she was not entitled for the same. Petitioner had given an undertaking at that point of time itself, i.e. in the year 2006, that in case the fixation of pay is found to be incorrect, the petitioner will refund the excess amount, hence the case of the petitioner is covered by the judgment passed in **Jagdev Singh's case** (supra) and not by that passed in **Rafiq Masih's case** (supra), and therefore, no grievance can be raised by the petitioner with regard to recovery which is being effected from her pensionary benefits by the respondents, after withdrawing the increment, which was wrongly extended to her.

Now the question that arises for consideration in the present case before this Court is that whether the petitioner is entitled for the interest on the delayed release of the pensionary benefits to her or not. 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 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 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 petitioner retired on 31.03.2011 but the pensionary benefits were released to her starting from January, 2012. The gratuity amounting to Rs.6,82,471/- was paid to her on 19.01.2000 and the amount with regard to the leave encashment was released in her favour in two installments of Rs.80,000/- and Rs.95,313/- on 18.06.2014 and 17.11.2014, respectively.

That being so, especially when no justifiable reason has been mentioned by the respondents for the delay that occurred in releasing the said amounts to the petitioner either in the reply or during the arguments, the said delay has to be attributed to the respondents only. Once the delay is attributable upon the respondents as per the laws settled hereinbefore vide the judgments passed in **A.S. Randhawa's case** (supra) and **J.S. Cheema's**

case (supra), the petitioner becomes entitled for the grant of interest at the rate of 6% per annum on the delayed payments of pensionary benefits to her from the date the said amount became due till the same was released in her favour, and the said benefit is extended to her.

Let the computation 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 computed be released in favour of the petitioner within a period of next four months.

Allowed.

30.03.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

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