IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205) **CWP-14116-2015**
Date of Decision : April 27, 2022

Chaman Lal **.. Petitioner**

Versus

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

(205-2) **CWP-7650-2016**

Prithi Chand **.. Petitioner**

Versus

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

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. H.S. Saini, Advocate, for the petitioner,
(in CWP No.14116 of 2015).

Mr. Vivek Sharma, Advocate, for the petitioner,
(in CWP No.7650-2016).

Ms. Kanica Sachdeva, Assistant Advocate General, Punjab.

Mr. Vikas Chatrath, Advocate, for respondents No. 4 to 6,
(in CWP No.14116 of 2015).

Mr. Mahesh Dheer, Advocate, for respondent No.3,
(in CWP No.7650 of 2016).

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, two writ petitions, the details of which have been given in the heading of the order, are being disposed of as the same question of law is raised in both the petitions. For the purpose of the present order, the facts are being taken from CWP No.14116 of 2015.

In the present petition, the grievance of the petitioner is that the petitioner retired from service in the year 1999 and keeping in view the recommendation of 5th Pay Commission, which was to be given effect from 01.01.2006, the pension of the petitioner was refixed. But after fixing the pension w.e.f. 01.01.2006 some discrepancy was noticed and by the impugned order dated 02.08.2014 (Annexure P-4), the respondents have refixed the pension of the petitioner after removing the discrepancy and recovering the payment of excess amount, which according to the petitioner is not permissible 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.*** The prayer of the petitioners is for setting aside the impugned order dated 02.08.2014 (Annexure P-4) qua the recovery of the excess payment made to the petitioners as the petitioners are not challenging the re-fixation of the pension but the recovery of the excess amount only.

Upon notice of motion, the respondents have filed the reply defending their action for recovering the excess amount. Respondents have stated in their reply that after revision of the pay scale, the pension being extended to the petitioners was to be revised w.e.f. 01.01.2006 but while re-fixing the pension, a component which was not required to be added in the pay i.e. interim relief and dearness pay, was added so as to calculate the amount of pension admissible to the petitioners, which was contrary to the notification issued at the relevant time and therefore, as there was a clerical mistake in computing the pension of the petitioner, the respondents are entitled for recovery of the excess amount in the present case after re-fixing the pension for which the petitioners are entitled for.

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

The question, which arise in the present petition is whether, the recovery of the excess amount paid to the petitioners is permissible in the facts and circumstances of the present case or not as, the revision of the pension by the respondents is not under challenge by the petitioner in the present petition.

From the facts which have been stated hereinbefore, it is not disputed that according to the notifications, which were prevalent in the year 2009, according to which the pension was to be refixed w.e.f. 01.01.2006, two components such as the dearness pay and interim relief could not be part of the pay for calculating the pension. The said mistake occurred by the respondents while calculating and fixing the amount of pension w.e.f. 01.01.2006. There is no dispute even by the petitioners that the calculations which was done by the respondents at the time of fixing of the pension w.e.f. 01.01.2006, was not correct. The only question subsists is whether the excess payment can be recovered from the petitioners or not.

The Hon'ble Supreme Court of India while passing the order in ***Rafiq Masih's case (supra)***, held 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:-*
>
> *(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."*

A bare perusal of the paragraph 12 would show that no recovery can be done from the retired employees and no recovery could have been done with regard to the benefits, which the employee continued to get for a period of 5 years prior to the date of withdrawal.

In the present case, the petitioners retired in the year 1999 much before the re-fixation of their pension in the year 2009, which was to be done w.e.f. 01.01.2006 and therefore, the benefit was being granted to the petitioner after their retirement. Further, present is not the case where a benefit given is being withdrawn rather, a mistake occurred in fixation is being rectified, therefore, keeping in view the facts and circumstances of this case, the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, will not be applicable.

Further, a Division Bench of this Court in ***LPA No.874 of 2014 titled as Balbir Singh versus State of Haryana and others, decided on 04.09.2014*** held that where there is a clerical mistake in re-fixation of pension, the same can be rectified and the excess amount paid can be recovered. The relevant paragraph of the judgment is as under:-

> *"The appellant is not challenging the fixation of his pension. He also does not dispute that after re-fixation of his pension by the authorities, less payment was to be made, but due to inadvertent clerical error on the part of the bank authorities, excess amount was credited in his pension account, which he was not entitled to. In these circumstances, notice was issued to the appellant to refund the excess payment received by him. In our opinion, the said excess payment, which was made to the appellant due to clerical error on the part of the bank, is duly recoverable. The aforesaid judgments, relied upon by learned counsel for the appellant, are not applicable in the wake of the situation as sketched out above. The principle laid down in these judgments is that where the Government consciously makes excess payment to an employee considering that it was validly being given to him, but later on it is found that such employee was not actually entitled to receive the said amount, in that situation, if the excess payment was made under bonafide act of the State, and without any misrepresentation or fraud by the employee, recovery of such excess payment cannot be effected from the employee after his retirement. This principle enunciated in the aforesaid judgments does not apply to the facts of the present case. Here, due to clerical error on the part of the bank, excess amount was credited in the pension account of the appellant, for which he was not entitled to either at that time or subsequently. Therefore, such amount has to be refunded by the appellant to the authorities, which has been received by him in excess. The principle of unjust enrichment*

will be applicable in the present case and when the appellant is approaching this Court under Article 226 of the Constitution of India, he cannot be granted an inequitable benefit, by relying upon the aforesaid judgments. The necessary relief has already been granted to the appellant by the learned Single Judge, which in our opinion is more than the relief, which he deserves. We do not find any illegality in the order passed by the learned Single Judge."

Keeping in view the above, as the present case relates to the re-fixation of pension and while calculating the amount of pension so as to refix the same, the pension was wrongly fixed due to a clerical mistake. Keeping in view the settled principle of law stated hereinbefore, the respondents are well within their jurisdiction to recover the excess amount paid being public money which amount has been paid to the petitioners over and above their entitlement.

In view of the above, no fault can be found in the facts and circumstances of the present case with regard to the recovery of the excess amount from the petitioners.

Accordingly, both the writ petitions are dismissed.

April 27, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes