

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(110)

CM No. 3500-CWP-2022 in/and
CWP No. 31167 of 2019
Date of Decision : 15.03.2022

Prem Singh

...Petitioner

Versus

Union of India and others

...Respondents

(Through Video Conferencing)

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

Present: Mr. Hardip Singh, Advocate for the petitioner.

Ms. Gehna Vaishnavi, Advocate Standing Counsel for
respondents No. 1, 2 and 4.

Harsimran Singh Sethi J. (Oral)

CM No. 3500-CWP-2022

The present application has been filed for vacation of stay of
order dated 29.10.2019.

Learned counsel for the applicant-respondent-UIO submits that
the interim order granted by a Co-ordinate Bench of this Court vide order
dated 29.10.2019 is causing prejudice to the respondents and, therefore, the
same may kindly be vacated as the petitioner is retaining the excess amount
paid to him under the said interim order.

Learned counsel appearing on behalf of the petitioner submits
that the petitioner is ready with the arguments on the main petition itself and
hence, the same may kindly be heard and decided rather than deciding the

prayer of the respondents for vacation of stay of order dated 29.10.2019.

Learned counsel for the respondents-UOI raises no objection that the main writ petition is taken up for hearing today itself.

Keeping in view the joint request of learned counsels for the parties, rather than deciding the prayer of the respondents for the vacation of interim order dated 29.10.2019, the main writ petition is taken up for hearing today itself by preponing the date of hearing from 9.8.2022.

CWP No. 31167 of 2019

In the present petition, the challenge is to the order dated 03.10.2019 (Annexure P-5) by which, recovery of ₹3,66,811/- has been imposed upon the petitioner and the same is being recovered from the pensionary benefits of the petitioner.

Learned counsel for the petitioner argues that in the present case, the petitioner is not challenging the withdrawal of the benefit but he is only restricting his claim with regard to the recovery, which is being done from him of the alleged excess amount being paid to him.

As per the averments made in the petition, petitioner was appointed as a Vehicle Mechanic with the respondents in December, 1971 and after serving for 20 years and 06 months, the petitioner was discharged from service in May, 1992. After the discharge, the petitioner's pension got revised by the respondents keeping in view the recommendations of the 6th Pay Commission, which were made effective from 01.01.2006. Keeping in view the said recommendations, the pension of the petitioner was revised w.e.f. 01.01.2006. Thereafter, the petitioner started getting the revised pension from the respondents. On 03.10.2019, the respondents issued a New Revised Pension Payment Order wherein, the pension, which was already

being drawn by the petitioner, was revised to his detriment and an excess amount of ₹3,66,811/- was sought to be recovered from the petitioner on the ground that the same has been paid in excess of the entitlement of the petitioner by extending him a benefit, for which petitioner was not entitled for. The said order is under challenge in the present petition qua recovery of the excess amount paid on the ground that no excess payment paid to the petitioner can be recovered from him keeping in view the judgment of Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***, and further that the pension of the petitioner was re-fixed without giving any opportunity of hearing to him.

Upon notice of motion, the respondents have filed the reply. In the reply, the respondents have mentioned that as the petitioner was a pensioner as on 01.01.2006, keeping in view the recommendations made by the 6th Pay Commission, pension of the petitioner was fixed by the respondents and pension was being paid at the amount so arrived at but later on, it was discovered that the pension computed in favour of the petitioner, was not correct and now, by the impugned order, the correct pension of the petitioner has been fixed and the excess amount paid is being recovered from the pension of the petitioner in installments.

Learned counsel for the respondents submits that as the petitioner is not entitled for the excess amount of pension paid to him, the recovery of the same is permissible keeping in view the judgment of Hon'ble Supreme Court of India in Civil Appeal No. 3500 of 2006 titled as ***High Court of Punjab & Haryana and others Vs. Jagdev Singh***, decided

on 29.07.2016, which judgment has been passed after taking into consideration the judgment in ***Rafiq Masih's case (supra)***, being relied upon by learned counsel for the petitioner.

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

The only question, which has been raised before this Court is whether the petitioner is liable to refund the excess amount, which was paid to him by the respondents themselves after re-fixing his pensionary benefits w.e.f. 01.01.2006 i.e. after a period of 13 years and that too without giving any opportunity of hearing to him. It is a settled principle of law that any order, which involves civil consequences, the same can only be passed after giving due opportunity of hearing to the delinquent employee/ pensioner. In the present case, not only the pension of the petitioner has been revised by the respondents without affording any opportunity of hearing to him but even the recovery is being made from the petitioner and that too without following the rules of natural justice. It is a settled principle of law that wherever an order involves civil consequences, giving opportunity of hearing is must.

Further, as per the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, no recovery can be made from a retired employee, especially, who is working on Class-III or Class-IV post. The relevant paragraph of the said judgment in ***Rafiq Masih's case (supra)*** 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:-

(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.”

It is an admitted case that the petitioner was not at fault while fixing his pension after the recommendations of the 6th Pay Commission and the same was done by the respondents on their own. Further, as per the judgment in ***Rafiq Masih's case (supra)***, no recovery can be made from a retired employee, especially, who was working on Class-III or Class-IV post. The petitioner admittedly is a retired employee and was working on a post of Vehicle Mechanic, which is a Class-III post. Hence, the case of the petitioner is covered by the judgment in ***Rafiq Masih's case (supra)*** qua the recovery of the excess amount.

The judgment in ***Jagdev Singh's case (supra)***, being relied by the respondents, is not applicable in the present case for the reason that only a performa of the undertaking has been appended by the respondents. No undertaking, purported to have been given by the petitioner is on record, as of now. Further, nothing has come on record to show as to when the purported undertaking was tendered by the petitioner. In the absence of these fact not being on record, it cannot be held that any undertaking was submitted by the petitioner at the time of advancement of benefit, which was being sought to be withdrawn now so as to grant jurisdiction to the respondents to reconsider the amount by placing reliance upon so called undertaking. A Co-ordinate Bench of this Court while deciding CWP No. 8534 of 2016 titled as ***Satish Manchanda and another Vs. State of Haryana and others***, , on 16.12.2016, after considering the judgment in ***Jagdev Singh's case (supra)***, in similar circumstances has held as under :-

“12. As far as the undertakings are concerned then it fall for consideration can those be used against employees falling in direction (ii) of Rafiq Masih as interpreted in Jagdev Singh where the issue involved was of an employee opting out of revised pay scale while furnishing undertakings. Undertakings given at the time of pay revision are different in character from grant of an additional increment because in revision of pay scales employees reap benefits differently and, therefore, are allowed by rules to exercise options depending on variable factors such as dates when increments fall due and things like that. The additional increment here was given as a one-time measure but with a recurring effect increasing pay but not the pay scale and that is why undertakings given at the time of revision of pay scales would be binding as a person should not be seen to shift his stand according to the vagaries of pay

revision. If direction (iii) operates then by the very nature of things direction (i) would be accompanying right and when the two are read together recoveries are in my view impermissible in law.

13. The undertakings given by the petitioners at Annex R-3/2 and R-3/3 [with the written statement] in 2008 was even when the additional increments wrongly conferred were being paid since 2003 till retirement. What occasioned the demand of furnishing undertaking by the petitioners was the pay revision in the year 2008 in implementation of the Shetty Commission when a decision was taken to give benefits retrospectively from 2003 and not 2005. In any case, at the time undertakings were given, parties did not contemplate that they will ever be used against them since the petitioners were allowed to retire peacefully without initiating any action for recovery. Once they passed the age of superannuation then to disturb them may be a travesty of justice. However, since the grant of additional increments was indisputably wrongful with no clarity on the subject prior to retirement, the benefit inflating the pay wrongly will not percolate to increase service pension, allowances and retiral benefits which are open to alteration. This order only makes impermissible recovery from 2003 to 2012 in view of the law in direction (iii) in Rafiq Masih.”

The facts of the present case are covered by the judgment rendered by the Co-ordinate Bench of this Court in **Satish Manchanda's case (supra)**. The case of the petitioner is also squarely covered by the judgment of the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra)**, according to which, the respondents cannot recover the excess amount paid to the petitioner as there was no misrepresentation on behalf of the petitioner with regard to the facts or circumstances and the benefit,

which was withdrawn, was voluntarily extended to the petitioner coupled with the fact that petitioner had already retired from service by the time, the benefit extended to him was withdrawn and the excess amount paid, was sought to be recovered.

In the facts and circumstances of this case, the judgment of the Hon'ble Supreme Court of India in ***Jagdev Singh's case (supra)*** is not at all applicable.

Keeping in view the above, though the re-fixation of the pension is upheld but the recovery being made from the petitioner is set-aside. The amount already recovered from the petitioner be refunded back to the petitioner within a period of two months from the date of receipt of copy of this order.

Petition is allowed in above terms.

March 15, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes