

255-A

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

**CWP-828-2021
Date of Decision: 21.02.2023**

Santosh Kumari

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Nitesh Singla, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction especially in the nature of *certiorari* to set aside letter/order dated 27.02.2020 (Annexure P-6) and letter dated 17.11.2020 (Annexure P-7) qua the petitioner vide which recovery of arrears i.e. Rs.1,03,461/- has been ordered from the petitioners by the respondent-Department, wrongly, illegally and without giving any opportunity of hearing.

Learned counsel for the petitioner has submitted that the petitioner had retired on 28.02.2018 and she was granted all the benefits that she was entitled to at the time of retirement. Thereafter, since there was instructions from the Government of Punjab pertaining to grant of revision of pay scales on the basis of higher education qualifications vide Annexure

P-2 and the petitioner was not granted arrear regarding the same. She filed a writ petition before this Court, in view of a judgment rendered by this Court in *CWP-3931-1992* titled as “*Baldev Raj Mittal and others Vs. State of Punjab and others*”, decided on 15.04.2009 and vide Annexure P-4, the writ petition was disposed of on 23.10.2018 with a direction to decide the legal notice in the light of the aforesaid judgment passed in *Baldev Raj Mittal and others’ case (supra)*. Thereafter, vide Annexure P-5 an order was passed in pursuance of the aforesaid directions whereby it was decided that the claim of the petitioner was accepted and allowed the claim of the petitioner and she was granted pay-scale of 620-1200 with initial pay 660 w.e.f. 01.01.1978 as per demand made by legal notice dated 02.05.2018. It was further directed that these benefits are payable only till 31.12.1985 and thereafter, she will be entitled the pay scales as per the original designation from 01.01.1986. He submitted that the petitioner was granted the benefit of arrear to the tune of Rs.1,03,461/- on 03.11.2020. However, after some time, suddenly the respondents-Department made a U-turn and they thought that the arrears could not have been paid to the petitioner and notice was issued to the petitioner with regard to the recovery of the amount vide Annexure P-7. He further submitted that when it was asked from the respondents-Department that what was the reason for recovering of the said amount, they submitted that the Department did not pay arrears to the teachers of secondary education but the arrears were paid by the Government to the elementary teachers and they cannot make discrimination and therefore, she is bound to deposit back the aforesaid amount which was paid to the petitioner.

Learned counsel for the petitioner further submitted that the

petitioner had retired in the year 2018 and after retirement, payments of arrears have been paid after prolonged litigation and therefore, no recovery can be effected from the petitioner in view of the law laid down by the Hon'ble Supreme Court in “*State of Punjab and others Vs. Rafiq Masih (White Washer) and others*”, 2015(4) SCC 334, especially in view of the fact that she was elementary teacher falling in the category of Group 'C', and even otherwise also after retirement, recovery was not permissible particularly in view of the fact that it was not the case that the petitioner had acted in fraudulent manner or had misrepresented the respondents-Department but rather respondent-Department had paid the arrears in pursuance of prolonged litigation which was filed by the petitioner and twice directions were issued by this Court. Therefore, the impugned orders are liable to be set aside.

On the other hand, Ms. Anju Sharma, Kaushik, learned DAG, Punjab submitted that the respondents were within their competence to withdraw the arrears granted to the petitioner because the teachers of the secondary education were not paid arrears, and therefore, the teachers of elementary education could not be paid the same.

I have heard the learned counsel for the parties.

After prolonged litigation of the petitioner with regard to her right to get the benefit of higher pay-scale in view of higher education, the respondents-Department paid the petitioner her arrears. At the time of the payment of arrears, the petitioner had already retired from the Department. Petitioner had retired on 28.02.2018. It is not the case of the State that there has been any fraud or misrepresentation by the petitioner. The Hon'ble

Supreme Court in *State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)*, settled the aforesaid issue with regard to the permissibility to recover the money from the retired employee and in the conclusion part laid down the following parameters which are reproduced as under:-

“18. 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.”

The facts and circumstances suggest that the case of the petitioner falls in category of (i) & (v), and therefore, the case of the petitioner is squarely covered by the aforesaid judgment. The recovery from the petitioner is impermissible under the law. Consequently, the present petition is allowed. The impugned order/letter vide Annexure P-6 dated 27.02.2020 and Annexure P-7 dated 17.11.2020 pertaining to the petitioner qua recovery are hereby set aside.

The learned counsel for the petitioner has submitted that since there was an interim order passed by this Court, there was no recovery effected from the petitioner and therefore, there is no need to pass any order with regard to refund of any amount.

Consequently, the present petition is disposed of.

21.02.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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