IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(246) **RSA No. 1415 of 2019 (O&M)**
Date of Decision : 30.01.2023

State of Punjab and others

...Appellants

Versus

Lekha Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab for the appellants.

Mr. Brijeshwar Vashist, Advocate and
Mr. Tarunveer Vashist, Advocate for the respondent.

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Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed impugning the judgment of the lower appellate court dated 15.11.2018 by which, the judgment dated 29.11.2014 passed by the trial court dismissing the suit filed by the respondent-plaintiff was set-aside.

Certain facts need to be mentioned here so as to appreciate the controversy in the correct perspective.

While implementing the recommendation of the Pay Commission w.e.f. 01.01.1996, the pay of the respondent-plaintiff was also fixed by the department without there being any input from the respondent-plaintiff. In the year 2011, it was found by the department that the pay of the respondent-plaintiff was wrongly fixed, which was sought to be corrected. Vide order dated 29.01.2011, the mistake, which occurred while fixing the salary of the respondent-plaintiff w.e.f. 01.01.1996, was corrected and the excess amount paid to the respondent-plaintiff was sought to be recovered in instalments.

Against the said order of recovery, the respondent-plaintiff filed an appeal, which appeal came to be decided on 19.07.2011 and by holding that as there was no misrepresentation on behalf of the respondent-plaintiff, the recovery sought to be made from the respondent-plaintiff was withdrawn. Thereafter, without giving any opportunity, the order dated 19.07.2011 was re-considered and modified vide order dated 05.02.2013 and it was directed that the recovery of the excess amount be done from the respondent-plaintiff. The respondent-plaintiff challenged the said order dated 05.02.2013 by which, the recovery of the excess amount was sought to be done from her.

Notice was issued and the appellants-defendants filed a reply, wherein, they stated that the pay of the respondent-plaintiff was wrongly fixed w.e.f. 01.01.1996 and as the said mistake came to their notice in the year 2011, after giving due opportunity to the respondent-plaintiff, the pay was re-fixed and the excess amount of ₹93,497/- was sought to be recovered. As per the appellants-defendants, the order passed by the appellate authority for not effecting the recovery dated 19.07.2011 was rightly withdrawn by the impugned order dated 05.02.2013 as the respondent-plaintiff had been paid the money beyond her entitlement, which needs to be recovered being public money.

Keeping in view the evidence, which came on record, the suit filed by the respondent-plaintiff was dismissed by the trial court vide order dated 29.11.2014 against which, the respondent-plaintiff preferred an appeal before the lower appellate court. The lower appellate court vide order dated

15.11.2018 allowed the said appeal filed by the respondent-plaintff holding that once there was no misrepresentation on the part of the employee concerned, no recovery of the excess amount paid was permissible keeping in view the settled principle of law and the instructions being relied by the department dated 05.10.2012, cannot be made applicable, especially, with retrospective effect. The recovery of the excess amount sought to be done vide order dated 05.02.2013 from the respondent-plaintiff was set-aside.

In the present appeal, the State is impugning the judgment passed by the lower appellate court dated 15.11.2018.

Learned counsel for the appellants-defendants argues that once there was instructions by the Govt. of Punjab dated 05.10.2012, the recovery is liable to be done though, the respondent-plaintiff was not at fault in receiving the said excess amount as the salary was fixed by the department. Learned counsel submits that ignoring the instructions dated 05.10.2012 while passing the judgment dated 15.11.2018, the lower appellate court exceeded its jurisdiction.

Though, it is a conceded fact that there are instructions by the Govt. of Punjab dated 05.10.2012, according to which, only the Group-D employees or the employees, who were at the verge of retirement, can only be given the benefit of non-recovery of the excess amount paid to them but the same instructions do prescribe the recovery from the other set of employees, who might have been paid the benefits without there being any entitlement. The said instructions are to be seen in the light of the settled principle of law. 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,*** has held that as to under what circumstances, the recovery of the excess amount cannot be done from the employees. The relevant paragraph 12 of the said judgment 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:-*
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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."*

A bare perusal of the above would show that where an employee continues to get benefit for a period of five years before the withdrawal of the same, the recovery is not permissible. In the present case, it is a conceded fact that benefit was extended to the respondent-plaintiff in the year 1996, which was sought to be withdrawn after a period of 15 years in the year 2011 hence, the claim of the respondent-plaintiff is covered by the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra),*** that the recovery of the excess amount cannot be done.

Not only this, the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022,*** has held that where there is no fraud played by an employee in getting a particular amount then the excess payment made to the employee, who is not at fault, cannot be recovered. The relevant paragraph of the said judgment is as under:-

> *"(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."*

In the present case, even in the order dated 19.07.2011, the department itself had recorded a finding that there was no misrepresentation on the part of the respondent-plaintiff. That being so, keeping in view the evidence, which had come on record and the settled principle of law, the recovery of the excess amount could not have been done from the respondent-plaintiff and on the basis of the instructions dated 05.10.2012, which are contrary to the settled principle of law.

Even otherwise, the salary of the respondent-plaintiff was re-fixed by the department in the month of January, 2011. The recovery of the excess amount, which was sought to be done upon re-fixation of the salary, was withdrawn in July, 2011. On the said date, the instructions dated 05.10.2012 were not even in existence hence, application of the said instructions dated 05.10.2012 with retrospective effect is not permissible. In the present case, the instructions dated 05.10.2012 could not have been made applicable with retrospective effect upon the respondent-plaintiff to withdraw an order, which was passed in the year 2011.

No perversity has been pointed out by the learned counsel for the appellants-defendants in the order dated 15.11.2018 passed by the lower appellate court.

Keeping in view the above, no interference is called for in the present regular second appeal.

Dismissed.

CM-3680-C-2019

As the main regular second appeal has been dismissed, the present application also stands dismissed.

January 30, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No