HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CWP-5002-2020 (O&M)
Date of Decision: 03.10.2023
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Neena Sharma ... Petitioner

VS.

State of Haryana & Ors. ... Respondents
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
****

Present: Mr. JS Toor, Advocate for the petitioner

Mr. SS Mann, Addl. AG Haryana

Ms. Preeti Singh, Advocate for respondent No.3
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Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* quashing the letter/order dated 15.01.2020 (Annexure P1) passed by respondent No.2 whereby recovery of excess amount to the tune of Rs.5,14,346/- paid in pension in respect of petitioner w.e.f. 01.01.2006 to 30.04.2019 @ Rs.5283/- p.m. (30% of total basic pension) has been ordered.

(2). Learned counsel for the petitioner submits that the petitioner joined the respondent No.2-Corporation as Clerk. Her request for premature retirement was accepted after depositing one month salary amounting to Rs.14,126/- and was allowed to retire as such w.e.f. 20.07.2004 after rendering 24 years 7 months of service. He further states that a speaking order was passed in pursuance to filing of CWP-20551-2001 filed by Parshotam Lal & Ors. pertaining to the issue of appointment of the petitioner, and in the said speaking order, the services of the petitioner was regularized and she was held entitled for pension which stood paid to her on 29.11.2007 w.e.f. 01.08.2004 including arrears till 31.01.2011.

(3). It is argued that the fixation of pension and payment of excess amount, if any, to the petitioner was not a result of any misinformation or misrepresentation of facts by the petitioner and moreover, the respondents detected the mistake of fixation of pension of the petitioner after more than 10 years and in such situation, the pension of the petitioner would be reduced from Rs.19,195/- to only Rs.13,912/- and as such, keeping in view the skyrocketing inflation, the impugned recovery and re-fixation of pension would cause severe hardship to the petitioner to live on the meager amount.

(4). Learned counsel then argued that as per various case laws of this Court as well as the Supreme Court viz. ***State of Punjab & Ors. Vs. Rafiq Masih (2015) 4 SCC 334***, no recovery can be made from Class-III and Class-IV employees if there is no fraud or misrepresentation on their part.

(5). Notice of motion was issued on 25.02.2020 and pursuant thereto, the respondents No.2 & 3 have filed their respective written statement/reply.

(6). Mr. Aman Bahri, Advocate for respondent No.2 contended that the petitioner is not entitled to any relief since she herself has given undertakings dated 09.06.2007, 27.11.2010 & 04.04.2018 (Annexures R2/1 to R2/3) to refund any excess amount received by her as a result of fixation of pay or any excess payment detected subsequently and also particularly in the light of the fact that as per Form of Option under Rule 6(1) (Annexure R2/4), the petitioner has agreed to revise the pay structure w.e.f. 01.01.2006 and as such, she cannot retain the amount received due to wrong re-fixation of pension in excess. Reliance is placed on ***High Court of Punjab & Haryana & Ors. vs. Jagdev Singh 2016(7) SCALE 471***, to contend that where the employee has given undertaking that any amount is paid in excess, he shall repay the same.

(7). Heard learned counsel for the parties.

(8). It cannot be denied that it was on account of clerical mistake on the part of the respondents that the excess amount has been paid to the petitioner on account of wrong fixation of pension w.e.f. 01.01.2006 to 31.12.2019 and resultantly, the excess amount of Rs.5,14,346/- has been ordered to be recovered by way of monthly deduction from the pension of the petitioner @ Rs.5283/- p.m.

(9). This Court, however, cannot be oblivious of the fact that the orders passed by the employer seeking recovery of monetary/pensionary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made.

(10). At this stage, it would be apt to note the following situations of hardship, as postulated by the Supreme Court in ***Rafiq Masih's*** case (supra), governing the employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement and recoveries by the employers therefrom, 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.*

(11). In the present case, admittedly, the petitioner is a Class-III employee having prematurely retired from the post of Clerk w.e.f. 20.07.2004. The impugned notice effecting recovery of Rs.5,14,346/- by way of monthly deduction from the pension of the petitioner @ Rs.5283/- p.m., has been issued on 15.01.2020 i.e. after 16 years of retirement of the petitioner. The period of delay on the part of the respondents for having detecting the mistake, and that too on their part, after about 16 years of the retirement of the petitioner itself is unexplained and unjustified which cannot be taken to the detriment of the petitioner.

(12). In the case of ***State of Punjab and others Vs. Chaman Lal Goyal, reported in 1995 (2) SCC 570***, the Supreme Court held that the delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the proceedings. Further held that the proceedings after an unnecessary, unexplained and unjustifiable long delay would result in great prejudice and amount to violation of the principles of natural justice.

(13). There is no statutory law regarding recovery of excess payment made by the employer to the employee. The recovery of excess payment is based on equitable consideration, which has been settled by the Apex Court in ***Sayed Abdul Qadir Vs. State of Bihar reported in (2009) 3 SCC 475*** wherein the Supreme Court while quashing the order directing the recovery of excess payment made to the teachers for their no fault after ten years observed as under:-

> *"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.......*
>
> *"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of*

> *the rule that was applicable to them, for which the appellants cannot be held responsible. ....Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."*

(14). In ***Jagdev Singh's*** case (supra), while opting for the revised pay-scale, the respondent had given an undertaking to refund any excess payment if it was so detected and demanded subsequently. The revised pay-scale in the selection grade was allowed to the respondent on 7.1.2000 and eventually, he was compulsorily retired from service on 12.2.2003. On 18.2.2004, a letter for recovery of an amount as Rs. 1,22,003/- was served upon the respondents pursuant to the direction of the Registrar of the High Court. Reliance placed on ***Jagdev Singh's*** case (supra) by the respondent is also distinguishable as the observations by the Supreme Court that the employee is bound by his undertaking is relatable to that case only as in that case the Officer furnished an undertaking while opting for the revised pay scale. If the same yardstick is adopted in the present case, then the whole spirit of the judgment in Rafiq Masih would be rendered redundant as the petitioner, undoubtedly is a Class-III employee and has been drawing the said benefit since last more than 10 years.

(15). Having said so, the petitioner, in no uncertain terms, falls within the four corners and thus is liable to be considered within the 'situations of hardship' as envisaged under Clauses (i) to (v) of Para-12 of the judgment in ***Rafiq Masih's*** case (supra).

(16). Accordingly and in view of the above discussion, this writ petition is allowed in part to the extent that the order/letter dated 15.01.2020 (Annexure P1) is set aside and the respondents are directed not to effect any recovery and if any, already recovered, the same shall be refunded to the petitioner, within a period of *one month* from the date of receipt of certified copy of this order.

(17). Ordered accordingly.

03.10.2023 **(Sandeep Moudgil)**
V.Vishal **Judge**

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No