

CWP No. 8511 of 2020

2023:PHHC:119620

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CWP No. 8511 of 2020

Date of Decision : 12.09.2023

Surinderjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sameer Sachdeva, Advocate for the petitioner.

Mr. Gurpreet Singh, Additional Advocate General, Punjab.

Mr. Vikas Chatrath, Advocate and

Ms. Tanya Sehgal, Advocate for respondents No. 2 and 6.

Harsimran Singh Sethi J. (Oral)

The present petition has been filed challenging the order dated 09.06.2020 (Annexure P-9) passed by the Bank re-fixing the pension of the petitioner on the ground that same was wrongly fixed while giving the benefit under the revised pay rules which came into effect w.e.f. 01.01.2006 as, dearness allowance and interim relief were made part of the basic pay so as to calculate the pension, which mistake has been rectified by the respondents while passing the impugned order.

Learned counsel for the petitioner submits that in the present case, even if it is assumed that the said calculation of the pension was done by mistake still, as the petitioner has already been paid the said amount by the respondents, no recovery of the same can be done 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.*** Learned counsel for the petitioner further submits that even otherwise, the component of dearness allowance and the interim relief should have been made part of the basic pay so as to calculate the pension.

Learned counsel for the respondent-Bank submits that not only in the case of the petitioner but in other cases also the same mistake was committed by the bank and the pension was fixed at a higher rate, which mistake was later on rectified and the similar action of the Bank taken against similarly situated pensioners was also challenged before this Court. Learned counsel further submits that this Court while passing order in CWP No. 14116 of 2015 titled as ***Chaman Lal Vs. State of Punjab and others***, decided on 27.04.2022 as well as CWP No. 7650 of 2016 titled as ***Prithi Chand Vs. State of Punjab and others***, has upheld the rectification of the pension and even the action to recover the amount has already been upheld, hence, the claim of the petitioner is covered against him as per the judgment in ***Chaman Lal's case (supra)***.

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

In the present petition, the petitioner's pension has been re-fixed upon rectification of a mistake, which had occurred while fixing the pension w.e.f. 01.01.2006. As per the respondents, the dearness

allowance and the interim relief could not have been made part of the basic pay so as to calculate the pension.

Learned counsel for the petitioner though has submitted that the dearness allowance and interim relief has to be the part of the basic pay while calculating the pension but nothing has been brought on record to support the said argument. In the absence of any record/instructions of the Government of Punjab that for fixing the pension w.e.f. 01.01.2006, the basic pay has also to include the dearness allowance and the interim relief, the claim of the petitioner that his pension was rightly fixed w.e.f. 01.01.2006 cannot be accepted.

Further, in the similar cases, this Court has already passed an order in ***Chaman Lal's case (supra)***, wherein, not only the re-fixation has been held to be valid but even the recovery has been held to be valid keeping in view the settled principle of law by relying upon the judgment of the Division Bench in LPA No. 874 of 2014 titled as ***Balbir Singh Vs. State of Haryana and others***, decided on 04.09.2014. The relevant paragraph of the said judgment is as under :-

“8. 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.

9. 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.

10. Further, a Division Bench of this Court in LPA No.874 of 2014 titled as Balbir Singh v. 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 bona-fide 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."

11. 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 re-fix 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."

Keeping in view the above, the claim of the petitioner is covered against him keeping in view the judgment in **Chaman Lal's case** (*supra*), hence, no relief can be granted to him in the present petition and

the order passed by the respondent-Bank re-fixing the pension of the petitioner as well as recovery of the excess amount paid is held to be valid.

Petition is accordingly dismissed.

September 12, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No