

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

**CWP-13689-2014 (O&M)
Date of decision : 18.01.2023**

Surinder Singh

..... Petitioner

versus

PRTC and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vikas Chatrath, Advocate
for the petitioner.

Mr. Anil Kumar Sharma, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

Petitioner is aggrieved of orders dated 15.04.2014 and 25.04.2014 (Annexures P-4 and P-5 respectively), whereby the pay of the petitioner has been refixed and recovery of Rs.7,17,973/- has been ordered from the gratuity and other arrears.

2. Counsel for the petitioner submits that the recovery of deduction of pay is in violation of principles of natural justice. It has been contended that there is no mis-representation attributable to the petitioner and thus the orders passed by the Corporation and the action in effectuating recovery is illegal and the same deserves to be set aside.

3. Petitioner who joined corporation on 15.10.1989 and was promoted as Junior Assistant and thereafter as Senior Assistant retired on attaining the age of superannuation on 31.07.2013. The petitioner was appointed vide order dated 28.05.1998 and was ordered to be placed in the initial grade of his pay scale. On the appeal preferred by him, the order of punishment was modified and the future effect of the punishment was annulled holding as under:-

“I agree with the contention of the appellant that the Managing director should have specifically mentioned in his order the period for which the reduction shall operate and whether the employee shall get back his future increment at the expiry of the said period. Looking at the facts of the case, it is made out that Surinder Singh did not keep the money with himself but gave it to Jagjit Singh, although he committed a grave irregularity in doing so. Considering all these facts, I feel it appropriate to hold that the delinquent official, Surinder Singh, shall stand reduced to the initial stage of his pay scale for a period of 5 (five) years, Shri Surinder Singh shall revert back to his present stage in his scale of pay and then start getting regular increments in future years from that stage. The said punishment shall, however, not affect his seniority in his cadre of service. The order of appeal, is therefore, modified to the extent explained above.”

4. The pay of the petitioner was thus restored in terms of the order passed in appeal and the petitioner kept on drawing the salary in terms of P-3. The petitioner retired on 31.07.2013. After his retirement, respondent-Corporation vide impugned order dated 15.04.2014 revised the salary of the petitioner and vide order dated 25.04.2014 ordered recovery of Rs.7,17,973/- from the retiral benefits of the petitioner.

5. The petitioner by way of present writ petition has impugned the aforesaid orders. Counsel for the petitioner has relied

upon the law laid down in ***Rafiq Masish (White Washer) etc., 2015(1) SCT 195*** to contend that the recovery could not have been effected from the petitioner having retired as senior Assistant. He further submits that the refixation has been ordered without giving any notice to the petitioner and thus the same cannot be sustained in the eyes of law. Further reliance is being placed upon Full Bench judgment of this Court in the case of '***Budh Ram vs. State of Haryana and others***, reported as ***2009(3) SCT 333***' to contend that where there is no misrepresentation, deception or concealment by the employee, no recovery can be effected. Respondents have filed their written statement and reiterated that the pay of the petitioner was wrongly fixed and the authorities have every right to consider the same in accordance with law. However, counsel for the respondents is not in a position to dispute the ratio of law laid down by Full Bench of this Court in ***Budh Ram's case (supra)*** and that by Apex Court in ***Rafiq Masih's case (supra)***.

6. Having heard counsel for the parties, this Court is of the considered opinion that any order passed at the back of the petitioner without granting any opportunity of hearing affecting his civil rights cannot be sustained. Respondents have not been able to show any fact to make out a case that the alleged wrong fixation of pay was result of any misrepresentation/deception or concealment by the petitioner.

7. In view of the aforesaid facts, the impugned orders Annexures P-4 and P-5 cannot be sustained and are hereby ordered to

be quashed. In view of law laid down in Apex Court in ***Rafiq Masih's case (supra)***, recovery cannot be effected from the petitioner after his retirement. Resultantly, the writ petition is allowed and it is directed that no recovery pursuant to order dated 25.04.2014 Annexure P-5 or dated 15.04.2014 Annexure P-4 can be effected from the petitioner. It is however made clear that it will open to the respondents to take steps for refixation of petitioner's pay in accordance with law. Before passing any such order, respondents shall afford an opportunity of hearing to the petitioner.

8. Ordered accordingly.

9. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

18.01.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No