

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

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CWP-14305-2023

Date of Decision :-11.12.2023

Parveen Kumar Gupta**..Petitioner**

Versus

State of Haryana and others**...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Sanchit Punia, Advocate and
Ms. Jasleen Kaur, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, prayer of the petitioner is for quashing of orders dated 16.12.2022 (Annexure P/9), 04.10.2022 (Annexure P/10) and letter dated 22.04.2022 (Annexure P-11) by which, the pay/pension of the petitioner was refixed by withdrawing the benefit of HRA.

2. Learned counsel for the petitioner submits that the petitioner is only aggrieved with regard to the recovery of the excess amount paid to the petitioner keeping in view the settled principle of law and is not pressing the relief qua fixing of his pay/pension.

3. Learned counsel for the petitioner argues that it has already come on record that the petitioner is a retired employee and has been reemployed after retirement and upon his reemployment, his pay was refixed by the respondents themselves and benefit of HRA was granted, which

benefit has already been withdrawn and the recovery of the excess amount paid to the petitioner, has been ordered by the respondents. Learned counsel for the petitioner submits that once the petitioner has already been retired from service, no recovery can be done from him keeping in view the settled principle of law settled by 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 Hon'ble Supreme Court of India in **Civil Appeal No.7115-2010** titled as **Thomas Daniel vs. State of Kerala and others** has held that where there is no misrepresentation on the part of the employee, no recovery of the excess amount paid to him, can be done.

4. Learned State counsel on the other hand submits that benefit of HRA was not admissible to the petitioner upon his reemployment and the same was wrongly granted to him but when said irregularity came to the notice of the respondents, the pay and pension of the petitioner was refixed and once the excess amount paid to the petitioner was beyond the entitlement of the petitioner, recovery can be done from him.

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

6. It is a conceded fact that pay of the petitioner was refixed by the respondents. Even after the reemployment, benefit of HRA was granted to the petitioner by the respondents themselves. That being so the factual position, once there is no misrepresentation on the part of the petitioner and the petitioner is a retired employee, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **Rafiq Masih (supra)** as well as in **Denial Thomas (supra)**, no recovery of the excess amount paid

to the petitioner, can be done by the respondents.

7. Keeping in view the facts and circumstances noticed hereinbefore coupled with the settled principle of law, claim of the petitioner qua the recovery of the excess amount is allowed. Respondents are directed to refund the excess amount recovered, if any, to the petitioner within a period of one month from the date of receipt of copy of this order.

December 11, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No