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

(273) **CWP-15855-2017**
Date of Decision : September 11, 2023

Lekh Raj **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Fateh Saini, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that his claim qua the recovery of Rs.57,055/- done from him has wrongly been rejected by the respondents keeping in view the instructions issued by the Government dated 23.02.2016 and further grant him all the benefits by taking into account the total service of the petitioner upto date of his retirement i.e. 31.05.2007.

2. Further prayer of the petitioner is that he has not been granted the benefit of ACP on completion of 20 years of service for which benefit he is entitled for. Last prayer raised in the present petition is that the tax which has been deducted on the arrears, is not permissible under law.

3. Qua the first argument, learned counsel for the respondents submits that a compensation amount of Rs.57,055/- was paid to the

petitioner at the time when he was compulsorily retired in the year 1999 but after the said order has been set aside and the petitioner has been treated in service, the petitioner was not entitled to retain the said benefit as the petitioner has already been paid salary by treating him in service hence, the respondents are well within their right to recover the said amount of compensation paid on retirement in view of the changed circumstances as the petitioner was treated in service upto the year 2007.

4. With regard to the benefit of service which the petitioner has rendered upto 2007, learned counsel for the respondents submits that the claim of the petitioner has been considered in accordance with law upto the date of his retirement i.e. 31.05.2007 and all the benefits for which the petitioner is found entitled for upto the said date has already been released to him. Learned counsel for the respondents further submits that the benefit of ACP has also been extended to the petitioner now vide order dated 01.09.2023 by re-fixing his salary.

5. Qua the last prayer of the petitioner with regard to the tax deducted, learned counsel for the respondents submits that once the arrears have been paid to the petitioner, the tax is liable to be deducted, which has been deducted and deposited with the Income Tax Department and in case, the petitioner is found liable for the refund, the same will be done by the Department of Income Tax, hence, no grievance can be made by the petitioner in this regard.

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

7. Prima facie, all the grievances raised by the petitioner in the present petition have been dealt with. With regard to the claim that Rs.57,055/- which was paid as a compensation at the time of compulsory

retirement in the year 1999, the same is liable to be recovered keeping in view the fact that the petitioner is now being treated in service upto the year 2007 and has been paid salary from 1999 till 2007. The instructions which are being cited is only that in case any amount in excess of the entitlement has been paid to an employee, which the employee continue to get for a period of five years, should not be recovered. In the present case, the recovery is not being made due to inadvertent payment rather, the same is being done keeping in view the changed circumstances as the petitioner is being treated in service instead of compulsory retirement, hence, instructions being relied upon by the petitioner to avoid the recovery is not applicable in the present case. Hence, the recovery of the said amount is permissible which is being done by the respondents.

8. With regard to the argument that the petitioner has not been granted the benefit of service upto May 2007, nothing has been brought to the notice of this Court that any service for which the petitioner is entitled for, has not been treated as qualifying service. In the absence of any material placed on record, it cannot be accepted that any period of service has not been treated as qualifying service.

9. Further, in case the petitioner has any such grievance, he will be free to approach the respondents by raising specific claim as to which part of the service for which the petitioner is entitled for to be treated as qualifying service, has not been taken into account for the grant of benefit and in case any such representation is filed by the petitioner, the same will be decided in accordance with law within a period of eight weeks of the receipt of any such representation.

10. With regard to the grant of ACP, the same has already been granted vide order dated 01.09.2023. Let the order dated 01.09.2023 be also

complied with by the respondents by extending the consequential benefits to the petitioner.

11. Further, as the benefit of ACP is extended to the petitioner w.e.f. 01.01.2004, the petitioner is entitled for the grant of interest on the said payment as the respondents themselves have found the petitioner entitled for the said benefit keeping in view the fact that the compulsory retirement ordered against the petitioner in the year 1999 has already been set aside and the petitioner has been treated in service upto 31.05.2007, hence, on the arrears of ACP, the petitioner is entitled for interest @ 6% per annum from the date the amount became due till the release of actual arrears in that regard keeping in view the fact that the same is covered by the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355.***

12. At this stage, learned counsel for the respondents has raised a plea that the sum of Rs.57,055/-, which is to be recovered from the petitioner should be paid by the petitioner with interest.

13. It may be noticed that the said benefit of compensation amount of Rs.57,055/- was extended to the petitioner keeping in view the order of compulsory retirement passed by the respondents which order was later set aside by the Court and the petitioner was treated in service, hence, the refund is to be made by the petitioner on the basis of the order passed by the competent Court of law and therefore, the petitioner is not liable to pay any interest on the sum of Rs.57,055/- as being asked for by the learned counsel for the respondents.

14. With regard to the deduction of tax at source, no grievance can be made by the petitioner as the Department is under an obligation keeping in view the income tax law to make recovery of the amount of the tax to be

deposited with the Income Tax Department. In case the petitioner is not liable to pay the tax, he can claim the refund from the Income Tax Department and no grievance can be made by the petitioner in that regard.

15. Keeping in view the above, no further orders are required to be passed in the present petition.

16. The present petition is disposed of in above terms.

17. Any civil miscellaneous application pending, if any, also stands disposed of.

September 11, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

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