

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20457-2019 (O&M)
Date of Decision: 05.05.2023

Kashmir Singh

....Petitioner(s)

Versus

Union of India and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sumit Dua, Advocate, for the petitioner.

Ms. Sonia Sharma, Advocate, for respondents No. 1 and 2.

Mr. Naren Partap Singh, Advocate, for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing the impugned action vide which the pension of the petitioner in the month of May, 2019 has been reduced coupled with reduction in pension and recovery has been effected without giving any opportunity of hearing or any show-cause notice to the petitioner and also in violation of the law laid down by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SC 334.***

2. Learned counsel for the petitioner has submitted that the petitioner joined Indian Army in the year 1964 as a Sepoy and after serving duly in the Indian Army, he retired in the year 1974 and thereafter, he had been getting regular pension from the Army which was revised from time to

time. He submitted that suddenly in the year 2019, the pension of the petitioner was substantially reduced after re-fixing the same and now a recovery is sought to be effected at the rate of Rs.3500/- per month in the nature of installments vide Annexure P-3. He submitted that it is not a case where the petitioner has committed any fraud or misrepresented to the respondent authorities for the fixation of his pension and in case it was so erroneously fixed by the respondent-Union of India, then after the retirement of the petitioner it could not be recovered. The petitioner retired way back in the year 1974 i.e. about 50 years ago but now suddenly his pension has been reduced and recovery is sought to be effected from the petitioner.

3. Learned counsel for the petitioner has specifically submitted during the course of arguments that he is challenging the recovery part which cannot be effected from the petitioner in view of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (Supra)* and he does not press with regard to re-fixation of pension and therefore the scope of the present petition may be confined only qua the recovery part. He submitted that before the passing of interim order by this Court 25.07.2019, one or two installments have been recovered from the petitioner and thereafter due to interim order passed by this Court no further recovery has been effected.

4. Ms. Sonia Sharma, learned counsel appearing on behalf of respondents No. 1 and 2 while referring to the reply filed by the Union of India has submitted that the petitioner was continuously getting pension but in the year 2019 a mistake was detected in the computer system. While referring to para No.5 of the reply, she submitted that the petitioner was granted pension as a Sepoy Reservist w.e.f. 01.04.1979 but the petitioner

was drawing service pension instead of reservist pension and his pension was erroneously fixed/revised by Asharaya System in view of various circulars by treating the pension as service pensioner instead of reservist pensioner because PEN type was erroneously inserted in the computer system as SER instead of RES and it was due to this mistake that the petitioner was getting over payment which was ultimately detected in the year 2019 and therefore it was decided that the pension of the petitioner be revised accordingly and recovery be effected from the petitioner. She submitted that so far as the mode of recovery is concerned, it was also decided that it will be recovered by way of installments of Rs. 3500/- per month as per Annexure R-2.

5. Mr. Naren Partap Singh, learned counsel appearing on behalf of respondent-Bank has submitted that the bank is only to disburse the pension on the basis of the instructions given by the Union of India and therefore the respondent-Bank has got no role to play so far as the claim of the petitioner is concerned.

6. I have heard the learned counsel for the parties.

7. The present is a case where the petitioner was recruited as a Sepoy in the Indian Army in the year 1964 and thereafter he retired in the year 1974 and his pension started w.e.f. 01.04.1979 as per the reply filed by respondent-Union of India. The petitioner was in Category-C being a Sepoy. He is stated to be about 80 years of age. After about 45 years of his retirement suddenly the Union of India detected a mistake in their own computer system and as per the reply filed by the Union of India, it is so stated that the pension of the petitioner was erroneously fixed since he was required to be given the pension as a reservist but he was given the service

pension for the rank of Sepoy. Clearly the Union of India has owned its mistake which is so elaborated in the reply especially in para No.5. The law with regard to recovery from a pensioner is no longer *res integra*. The Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (Supra)*** discussed the entire issue and observed that especially from Category-C and D employees no recovery can be effected after the retirement. The relevant portion of the aforesaid judgment is reproduced as under:-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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 the 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.”*

the petitioner falls in Category-(i) and (ii) and therefore the prayer of the petitioner is squarely covered in his favour in view of the judgment of the Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (Supra)*.

9. Learned counsel for the petitioner has confined the scope of the present petition only to the extent of recovery. Consequently, the action of the respondents-Union of India in ordering recovery of some amount from the pension of the petitioner in installments of Rs. 3500/- per month is not only illegal and perverse but also violative of the law laid down by the Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (Supra)*. Consequently, it is held that the respondent-Union of India is restrained from making any recovery from the petitioner. The amount of recovery which has already been made from the petitioner prior to the interim order passed by this Court shall be refunded to the petitioner forthwith alongwith interest @ 6% per annum within a period of three months from today. In case the aforesaid amount is not paid within three months from today, then the petitioner shall be entitled for a future rate of interest @ 9% per annum instead of 6% per annum.

10. Since the petitioner is an old age person of 80 years and he retired in the year 1974 which was about 50 years ago and he has been constrained to file the present petition and apart from the fact that the action of the respondent-Union of India is in clear violation of the law laid down by the Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (Supra)*, the petitioner shall also be entitled for costs which are assessed at Rs. 25,000/-which shall also be paid to the petitioner within a period of three months from today.

11. The present petition accordingly stands allowed.

05.05.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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