

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

CWP-18923-2022

Date of Decision:17.11.2023

JASPAL SINGH DHILLON

..... Petitioner

*Versus***BHAKHRA BEAS MANAGEMENT BOARD AND ORS**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Parminder Singh, Advocate for the petitioner.

Mr. Anil Kumar Sharma, Advocate
for respondents No.1 to 3.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226-227 of the Constitution of India is seeking setting aside of order dated 04.08.2022 (Annexure P-9) whereby respondent has recovered a sum of Rs.2,20,881/- from the retiral benefits of the petitioner.

2. On 22.07.1987, the petitioner joined respondent-BBMB. The petitioner time to time was promoted and he came to retire on 30.09.2021 on attaining the age of superannuation. The respondent while releasing retiral benefits of the petitioner deducted a sum of Rs.2,20,881/-. The respondent deducted said amount forming an opinion that from 01.11.2010 to 31.12.2020, an excess payment was made by way of an increment which the petitioner was not entitled.

3. Learned counsel for the petitioner *inter alia* contends that respondent has deducted aforesaid amount taking plea that petitioner has furnished undertaking dated 02.12.2009 to the effect that he would be liable to refund the excess payment, if any, made on account of incorrect fixation of pay and Board can deduct said amount from his future dues.

The petitioner had furnished undertaking on 02.12.2009 whereas deduction has been made with respect to payment made during 01.11.2010 to 31.12.2020. The respondent revised pay scale of petitioner w.e.f. 01.01.2006 and in this context, the petitioner had furnished undertaking dated 02.12.2009. The pay was revised w.e.f. 01.01.2006, however, the notification of the PSPCL was adopted in 2009. The case of the petitioner is squarely covered by judgment of Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc (2015) 4 SCC 334***.

4. Per contra, learned counsel for the respondents submits that petitioner furnished undertaking dated 02.12.2009 and as per said undertaking the petitioner was liable to refund excess amount either paid in past or in future. The respondent in view of undertaking had authority to deduct excess payment from retiral benefits of the petitioner.

In support of his contention he relied upon judgment of Hon'ble Supreme Court in ***High Court of Punjab and Haryana and others Vs. Jagdev singh 2016 (14) SCC 267***.

5. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

6. The conceded position emerging from record is that pay scale of the petitioner was revised w.e.f. 01.01.2006. The revision of pay scale took place w.e.f. 01.01.2006, however, notification in this regard issued by PSPCL was adopted by BBMB in 2009. The petitioner was not entitled to benefit of Advance Promotional Increment (for short 'API'). The said increment was assessed on 18.06.2012, though, it was implemented w.e.f 22.07.2010. The petitioner enjoyed benefit of said

increment from 22.07.2010 to 30.09.2021. As per respondent, the excess payment was made from 01.11.2010 to 31.12.2020 on account of wrong grant of increment. The respondent did not effect recovery during service of the petitioner, however, recovery came to be effected from retiral benefits of the petitioner.

7. The petitioner furnished undertaking on 02.12.2009 and said undertaking was furnished when the pay of the petitioner was revised in view of adoption of notification issued by PSPCL. The respondent by order dated 18.06.2012 extended benefit of API to the petitioner. It was respondent who calculated and thereafter extended benefit of increment to the petitioner. The respondent continued to extend said benefit from 2010 to 2020. The respondent at no point of time while petitioner was in service thought it appropriate to re-consider question of petitioner's entitlement to API. There is nothing on record to hold that increment was extended on account of connivance or fraud on the part of petitioner. The sole contention of the respondent is that there was undertaking dated 02.12.2009 furnished by the petitioner. The said undertaking needs to be considered in conjunction with option Form filed by the petitioner. The petitioner filed option Form while opting for revised pay scale and at that point of time undertaking was furnished. The said undertaking cannot be linked with increment which was assessed on 18.06.2012 and was extended from July' 2010 to September' 2021. The respondent on account of said undertaking got right, if any, to recover excess payment made on account of revised pay scale. The payment on account of revised pay scale could be made pre as well as post undertaking, thus, respondent at the most would recover excess payment with respect to revised pay

scale. The undertaking cannot be linked with excess payment made on account of increment assessed on 18.06.2021.

8. The facts of the present case are distinguishable from facts in the case of *Jagdev singh* (supra) whereas judgment of Supreme Court in *Rafiq Masih* (supra) is squarely applicable to the case in hand. Hon’ble Supreme Court in *Rafiq Masih* (supra) in Para 12 has clearly held that no recovery should be made from retired employees or employees who are due to retire within 1 year of the order of recovery. The respondent has effected recovery from the retiral benefits of the petitioner. This Court in *Tara Chand Vs. Secretary to Government of Punjab and others 2013 (4) SCT 251* in similar circumstances has held that excess payment made on account of step up on completion of 16 or 24 years’ service cannot be made from the retiral benefits.

9. In the wake of above discussion and findings, this Court is of the considered opinion that respondent has effected recovery contrary to law laid down by Hon’ble Supreme Court in *Rafiq Masih* and this Court in *Tara Chand*. The respondent is liable to refund the already recovered amount. The respondent shall refund the said amount within 2 months from today.

10. The impugned order is hereby quashed and writ petition is allowed in above terms.

(JAGMOHAN BANSAL)
JUDGE

17.11.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No