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

**CWP No.4087 of 2015(O&M)
Date of Decision: 01.02.2023**

Mohan Lal Gupta

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 14.11.2014 passed by the respondent No.2, thereby withholding an amount of Rs.71,694/- from the retiral benefits of the petitioner. Recovery of an amount of Rs.37,383/- from the pay of the petitioner has already been made before his retirement.

[2]. Learned counsel for the petitioner submits that the petitioner had retired on 31.03.2013. Refixation of the pay of the petitioner was done vide office order dated 27.08.2010 and the

petitioner does not wish to challenge the same as the same was correctly refixed. On account of the said refixation, an amount of Rs.37,383/- was recovered from the salary of the petitioner during his service. The petitioner does not wish to challenge the said recovery from his salary. The petitioner seeks to challenge withholding of an amount of Rs.71,694/- from his pensionary benefits on account of said fixation of pay.

[3]. The grievance of the petitioner is that an amount of Rs.71,694/- has been withheld from the pensionary benefits of the petitioner without there being any order of recovery passed in that context till date.

[4]. Learned counsel for the petitioner submits that in the absence of any such order of recovery, the respondents cannot withhold the amount from the pensionary benefits of the petitioner in the light of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others, 2015(1) RSJ 177**. Learned counsel further submits that the undertaking, if any, given by the petitioner on 29.01.1998 was not in respect of retiral dues of the petitioner. Even otherwise, the respondent-Department kept mum for more than 15 years from 29.01.1998 and only sought to recover the amount of Rs.71,694/- vide the impugned order dated 14.11.2014 without passing any order of recovery to that effect.

[5]. On 14.12.2016, learned State counsel was directed to produce the order of recovery, if any, passed by the respondents. In the event of not passing any order, the State was obligated to show under which order the amount has been withheld. The additional affidavit was required to be filed to this effect. It was also observed that in case, there is no order of recovery, the State shall consider the case of the petitioner in view ratio laid down in **Rafiq Masih's case (supra)**.

[6]. In compliance of the aforesaid order, an additional affidavit of Jitender Goswami, Executive Engineer, Sarasvati Heritage, Division No.2, Kurukshetra has been filed on behalf of the respondents No.1 to 6. Para Nos.3 and 4 of the said affidavit are reproduced hereasunder:-

“3. That it came in to the notice at later stage that the pay of the petitioner was wrongly fixed vide order Annexure R-3, so the matter was considered again and on the observation of Accounts Officer, Karnal and Chief Accounts Officer, Irrigation Department, Haryana, the pay of the petitioner was re-fixed vide order No.1052/22A dated 21.06.10. The pay of the petitioner which was fixed incorrectly vide order Annexure R-3 was re-fixed correctly vide above mention order No.1052/22A dated 21.06.10 (Copy of order was attached as Annexure R-1 with the written statement).

4. That as the petitioner has received excess payment

due to incorrect fixation of his pay, so it has been specifically ordered in Order Annexure R-1 to the accounts Clerk (Pay and TA) Construction Division no.14, Kurukshetra that the Overpayment may be recovered from the concerned officer (petitioner) as per instructions of Govt. In compliance of order Annexure R-1, the excess amount of Rs.1,09,077/- was recovered from the petitioner. Out of recovery Rs.1,09,077/-, Rs.37,383/- were recovered from the arrear/pay etc. of the petitioner and remaining amount of Rs.71,694/- was recovered by withholding Rs.71,694/- from the Death cum Retirement Gratuity of the petitioner.”

[7]. Perusal of the aforesaid pleadings would indicate that there is no order of recovery, except to note that the order dated 21.06.2010 was passed by the Department in the context of re-fixation of pay. The said office order cannot be equated with the order of recovery after the retirement of the petitioner in any manner as the same was passed during service of the petitioner.

[8]. Admittedly, the petitioner has not assailed the order of re-fixation of his pay as well as recovery of an amount of Rs. 37,383/- as he was in service at the relevant time. The grievance of the petitioner is only in respect of withholding of an amount of Rs.71,694/- from his pensionary benefits that too, without any order of recovery by the competent authority.

[9]. Since there is no order of recovery passed by the competent authority in respect of recovery or withholding of an amount of Rs.71,694/- therefore, the ratio of **Rafiq Masih's case (supra)** squarely applies to the case in hand. There was no undertaking furnished by the petitioner at the time of retirement for fixation of his pension.

[10]. For the reasons recorded hereinabove, this petition is allowed. Impugned order is set aside. The amount so withheld amount be paid to the petitioner along with interest @ 6% from the date of withholding of the amount till actual realisation of the same. Let the needful be done within a period of two months from the date of receipt of certified copy of this order.

01.02.2023

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No