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

CWP-27265-2017

Date of Decision: 22.02.2023

Gurvinder Singh Bedi

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Ms. Lavanya Paul, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the condition incorporated in the Gratuity payment order (Annexure P-3), dated 30.08.2017 vide which it has ordered to effect the recovery of Rs.1,72,954/- and order dated 25.09.2017 (Annexure P-4) vide which the respondent No.2 ordered the respondent No.3 to withheld the aforesaid amount out of the Gratuity amount of Rs.10 lacs and to pay the amount of Rs.8,27,046/- only to the petitioner and for issuance of a writ in the nature of *mandamus* directing the respondents to pay the withheld/recovered amount to the petitioner along with interest @18% p.a.

from the date of accrual till actual realisation of the same.

Learned counsel for the petitioner has submitted that the petitioner retired on 31.08.2017 as Sub Divisional Officer from the Department of PWD (B&R) in the State of Punjab. He further submitted that prior to the retirement of the petitioner when his pension papers were being processed, vide Annexure P-1 a letter was written by the Department of Indian Audit & Accounts that when the petitioner was appointed earlier, his pay was wrongly fixed. Thereafter, just before his retirement i.e. on 13.07.2017, an order was passed by the office of Chief Engineer, PWD (B&R) Branch, Punjab vide Annexure P-2 by which his pay was refixed and there was a calculation of recovery of Rs.1,72,954/- from the petitioner. Thereafter, when he retired, the aforesaid amount was deducted and recovered from his Gratuity. Learned counsel for the petitioner has also referred to the reply filed by the State wherein it has been so stated that the wrong fixation of pay when he was in service was a *bona fide* mistake but due to objection raised by the Audit Department, recovery was effected from the petitioner. Learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in "*State of Punjab and others Vs. Rafiq Masih (White Washer) and others*", 2015(4) SCC 334, and stated that when there is an absence of any fraud or misrepresentation at the hands of employee, then no such recovery can be effected from an employee. He further submitted that apart from the above even various parameters were laid down by the Hon'ble Supreme Court in the concluding part of the judgment where some categories have been given whereby recovery from an employee would be impermissible which includes

recovery from a retired employee and a person, who is going to retire within one year. He submitted that in view of the aforesaid judgment of the Hon'ble Supreme Court passed in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)**, recovery could not have been effected from the petitioner and the case of the petitioner is squarely covered by the aforesaid judgment.

On the other hand, Ms. Lavanya Paul, learned DAG, Punjab submitted that it was because of the objection raised by the Audit Department that recovery has been made from the petitioner and it is also correct that in the reply it has been so stated that the pay of the petitioner was wrongly fixed which was a *bona fide* mistake but the same was within the knowledge of the petitioner, who preferred to remain silent and took undue advantage.

I have heard the learned counsel for the parties.

The petitioner had already retired on 31.08.2017 and while he was in service, his pay was fixed. At the time of his retirement, recovery has been effected from his Gratuity. The plea taken by the learned State counsel that it was a *bona fide* mistake and it was within the knowledge of the petitioner is not sustainable in view of the law laid down by the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)**. The Hon'ble Supreme Court in concluding part of the judgment observed as follows:-

“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 herein above, 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 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.”

After hearing the learned counsel for the parties, this Court is of the view that the case of the petitioner is squarely covered by the aforesaid judgment and therefore, recovery could not have been effected from the petitioner.

Consequently, the present petition is allowed. The impugned orders dated 30.08.2017 and 25.09.2017 (Annexures P-3 & P-4) are hereby

set aside. The respondent-Department is directed to refund the amount of Rs.1,72,954/- to the petitioner which had been deducted from his Gratuity after his retirement, within a period of four months from today along with interest @ 6% per annum.

22.02.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |