IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

233

CWP No.21887 of 2020
Date of decision:27.04.2023

Raj Kumar ... Petitioner

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. B.K.Bagri, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

Petitioner has approached this Court for issuance of a writ in the nature of *certiorari* for quashing office orders dated 27.11.2020 and 23.12.2019 (collectively appended as Annexure P-2) passed by respondent No.3, whereby, salary of the petitioner has been re-fixed and an order has been passed to recover Rs.1,30,554/- from his salary and retiral benefits.

Facts leading to filing of the case are that petitioner was working as a Driver with the Haryana Roadways since 15.05.1989, but in the year 1996, he was adjusted as a Conductor. After the implementation of the recommendations of 7th Pay Commission, gross monthly salary of the petitioner was fixed at Rs.54,903/-, as is apparent from Annexure P-1. By impugned orders, his salary was re-fixed on the ground that an additional increment was given inadvertently to which he was not entitled and an objection had been raised by the audit.

At the outset, counsel for the petitioner gives up challenge to the impugned orders (Annexure P-2) insofar as refixation of pay is concerned. He, however, submits that as the petitioner has retired on 31.03.2021, during the pendency of the writ petition, recovery may not be ordered to be effected from his retiral dues and the amount recovered pursuant to the impugned orders, be ordered to be refunded. It is his contention that the impugned orders have been passed without any prior show-cause notice and without affording any opportunity to the petitioner to explain. He submits that recovery order was passed when the petitioner was on the verge of retirement. He has placed reliance upon the judgment of Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334.**

Per contra, State counsel has opposed the petition by making a reference to the stand taken by the respondents in the written statement.

I have heard counsel for the parties and perused the material placed on record.

Hon'ble Supreme Court in **Rafiq Masih's case (supra)** has held as under:-

> *"12. 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."*

From the above, it is evident that the case of the petitioner falls within the first two categories mentioned in **Rafiq Masih's case (supra)**. It cannot be disputed that the petitioner was working on Group C post and was due to retire within four months from the date of passing of impugned recovery order.

Still further, it deserves to be noticed that an objection has been taken by the State in its response that at the time of revision of pay scale, every employee is mandatorily required to be given an undertaking that in case any excess payment has been made to him, the same shall be liable to be refunded. However, it has been further submitted by the State that undertaking given by the petitioner is not traceable in the office.

Keeping in view the above, impugned orders (Annexure P-2) are modified to the extent that no recovery shall be effected from the petitioner. If any amount has been recovered pursuant thereto, it is directed that the same be refunded within a period of four months from today alongwith interest @ 6% per annum from the date of recovery till payment.

Petition is disposed of.

(SUVIR SEHGAL)
JUDGE

April 27, 2023
savita

Whether Speaking/Reasoned	*Yes/No*
Whether Reportable	*Yes/No*