

225
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9350-2017 (O&M)
Date of Decision: 15.03.2023

Sukhdev Singh

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Bachan Singh, Advocate with
Mr. Surmukh Singh, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Vikas Chatrath, Advocate, for respondent No.5.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for setting aside the impugned order dated 17.02.2017 (Annexure P-5) vide which the pay of the petitioner has been reduced from Rs. 11,320/- to Rs.10,025/- after 11 years and consequently reduction of pension from Rs. 5660/- to Rs. 4972/- w.e.f. 01.12.2000 vide Annexure P-10 dated 13.04.2017.

Learned counsel for the petitioner has submitted that the petitioner had retired from the post of Lecturer on 30.11.2000 but he was discharging the duties of Senior Lecturer at that point of time and thereafter

when he retired his pension was wrongly fixed to that of the pay scale of a Lecturer whereas he was actually performing the duties of a Senior Lecturer and the pay at the level of Senior Lecturer ought to have been fixed. Thereafter he filed a writ petition before this Court in which directions were issued for considering the representation of the petitioner and thereafter the respondents themselves re-fixed the pay of the petitioner to that of Senior Lecturer vide Annexure P-2 in the year 2003 and his pay was fixed at Rs. 11,320/- since it was calculated on the basis of the last pay drawn at the time of retirement and which was rightly fixed. He submitted that thereafter now in the year 2017 i.e. after 17 years vide Annexure P-5 it has been so written by the Indian Audit & Accounts Department that his pension was wrongly fixed and his fixation of pay has to be reduced from Rs. 11,320/- to Rs.10,025/- and consequently, recovery is to be effected from him.

He further submitted that he is aggrieved by the action of the respondents on two counts. Firstly that his pension could not have been reduced unilaterally and without passing any order or taking a conscious decision. He submitted that although one show-cause notice was issued to the petitioner before reducing the pension but on the reply filed by the petitioner, no order was passed by the respondent-authority and straightway the pension was reduced and recovery was ordered to be effected. He submitted that the action of the respondents was therefore violative of the principles of natural justice since there is no order for reduction of the pension nor any such order has been attached alongwith the reply filed by the State nor it has been so averred in the reply. He submitted that

Secondly, the petitioner retired in the year 2000 and recovery was sought to be effected in the year 2017 i.e. after 17 years and it is not a case of the State that the petitioner had made any misrepresentation or fraud and therefore after 17 years of retirement, no such recovery could have been effected from the petitioner in view of the law laid down by the Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SC 334*.

Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner had retired in the year 2000 and now recovery was sought to be effected in the year 2017 and the same is done because his pension was earlier wrongly fixed and now it has been reduced because the petitioner was although working as Senior Lecturer at the time of superannuation but he was working on a temporary basis and he was only discharging the duties but he occupied the post of Lecturer at the time of superannuation and therefore his pension was reduced.

Mr. Vikas Chatrath, Advocate appearing on behalf of the respondent-Bank submitted that the Bank is only a processing agency and therefore no role is to be played by the Bank and the competent authority of the petitioner is the State of Punjab.

I have heard the learned counsel for the parties.

There are two grievances of the petitioner. Firstly that his pay has been reduced and consequently his pension has been reduced in the year 2017 which is after 17 years of his retirement and without passing any order with regard to the same and the second grievance of the petitioner is that after 17 years of his retirement, the recovery is sought to be effected from

him and there is no fraud or misrepresentation on the part of the petitioner and therefore the case of the petitioner is covered by the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih(Supra)*.

So far as the first grievance of the petitioner with regard to reduction in the pension is concerned, vide Annexure P-2 which is of the year 2003, and after his retirement the pay of the petitioner was fixed at Rs. 11,320/- by the respondent-State themselves and thereafter a notice was issued to the petitioner to which he replied but it appears that no order was passed by the State in the year 2017 or thereafter whereby his pension was reduced based upon re-fixation of the pay at the time of his retirement. In the absence of any order by the competent authority after application of mind, the pension of the petitioner cannot be reduced and so far as Annexure P-5 is concerned, it is only a forwarding letter that his pension has been reduced. Therefore the action of the respondents in this regard appears to be totally arbitrary and therefore cannot be sustained. Therefore, the order by which it was conveyed to the petitioner vide Annexure P-5 that his pension has been reduced cannot be sustained. However, liberty is granted to the State to consider the reply which was filed by the petitioner to the show-cause notice issued by the State to the petitioner and after due application of mind to pass a well-reasoned speaking order with regard to the fact as to whether the pay of the petitioner is to be reduced or not and consequently his pension is to be reduced or not. Before passing such an order, the petitioner or his counsel shall be afforded an opportunity of hearing before the competent authority who is considering the aforesaid issue with regard

to the reduction of pension.

Needless to say that the fresh order, if any, shall be well-reasoned and speaking and thereafter shall be conveyed to the petitioner.

So far as the issue with regard to the recovery on account of reduction of pension is concerned, the said recovery is sought to be effected from the petitioner after a period of 17 years of his retirement and there is nothing in the reply or in the arguments raised by the learned State counsel that the petitioner got this amount by way of any fraud or misrepresentation. On the basis of the representation made by the petitioner for fixing of his pension on the basis of his pay scale at the post of Senior Lecturer at the time of superannuation was made by the State themselves and thereafter they cannot now after a period of 17 years recover an amount from him. The prayer of the petitioner by impugning the recovery part is squarely covered by the judgment of Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (Supra)*. It is therefore held that no recovery can be effected from the petitioner in this regard.

In view of the aforesaid position, the present petition is partly allowed. The recovery sought to be effected from the petitioner vide Annexure P-5 is not sustainable and is set aside. So far as the issue with regard to the reduction of pension is concerned, as aforesaid the State shall be at liberty to pass a fresh order in accordance with law after hearing the petitioner or his counsel.

15.03.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No