

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

225

CWP-7050 of 2018

Date of Decision:28.03.2023

Aruna Badyal

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Jyoti Sareen, Advocate,
for petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of the reply dated 11.01.2018 (Annexure P-6) vide which the claim of the petitioner, for refund of the amount of gratuity of Rs.91,921/- on account of recovery made from the DCRG, has been rejected, with a further prayer that the amount of earned leave for a period of 208 days to be paid to the petitioner alongwith interest @12% per annum.

Learned counsel for the petitioner submitted that the petitioner had retired as JBT teacher on 30.09.2016. She submitted that there are two fold grievances of the petitioner. Firstly, after the retirement of the petitioner

when DCRG was paid to the petitioner on 27.11.2017, the respondent department had deducted an amount of Rs.91,921/- on the ground that during her service tenure one wrong increment was given to the petitioner and therefore the said excess amount which had gone to the petitioner during the tenure of her service could not have been recovered after the retirement because the petitioner falls in Category-C and after her retirement no recovery could have been effected in view of the ratio of the judgment of the Hon'ble Supreme Court in State of Punjab and others versus Rafiq Masih (White Washer) etc. 2015 (4) SCC 334. She submitted that so far as the first grievance of the petitioner is concerned, the same is covered by the aforesaid judgment.

Secondly, at the time of her retirement, she was also entitled for the grant of earned leave. She submitted that earlier when a legal notice was served upon the respondents to which reply was given by them vide Annexure P-6 whereby it was admitted by them that the petitioner was entitled for the grant of 101 days of earned leave which has already been given to the petitioner to the tune of Rs.1,56,399/- and which is correct and now when the reply has been filed by the District Education Officer (Elementary Education), it has been so stated in the reply that even the petitioner was not entitled for even 101 days because she had already availed 91 days' earned leave and in this way she was entitled only for 45 days' earned leave. As per reply, the total admissible earned leave for the petitioner was 136 days and in this way $136 - 91 = 45$, the petitioner was entitled and therefore further recovery is required to be effected from the petitioner. She submitted that even as per para 5 of the

preliminary objections of the reply, it has been so stated that the total regular service of the petitioner was 17 years and whereas her earlier service on *ad hoc*/contractual basis was not counted. She submitted that after more than three years she was regularised and after regularization she had about 21 years' service to her credit. She further submitted that it is a settled law that once an employee is regularised then the service rendered by him/her prior to his/her regularisation is to be counted for the purpose of pensionary benefits in view of the judgment of this Court **Kesar Chand versus State of Punjab** 1988 AIR (Punjab and Haryana) 265. She submitted that in view of the above, the petitioner was entitled for the grant of benefit of counting of earned leave for about 21 years and even otherwise also the amount which has already been paid to the petitioner cannot be now recovered in view of the ratio of the judgment of the Hon'ble Supreme Court in ***Rafiq Masih***'s case (supra).

On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab has submitted that it is correct that the petitioner has retired on 30.09.2016 and she was paid gratuity on 27.11.2017 from where an amount of Rs.91,921/- was deducted on the ground that during her service an extra increment was given to her inadvertently. She while referring to the reply filed by the State also explained the aforesaid position in this regard. So far as the earned leave is concerned, she submitted that although in the reply which was filed to the legal notice vide Annexure P-5, it has been so stated that the petitioner was entitled for 101 days' earned leave regarding which payment has been made to her on 12.01.2017 but thereafter from the perusal of the record it was found that she had already availed 91 days' earned leave and therefore she was

entitled only for 45 days' earned leave and therefore recovery was required to be effected from her.

I have heard the learned counsel for the parties.

Both the grievances of the petitioner shall be dealt with independently. So far as the prayer of the petitioner pertaining to the grant of gratuity is concerned, it is an admitted case of the parties that the petitioner has retired on 30.09.2016 and after her retirement recovery of an amount of Rs.91,921/- has been effected from the gratuity of the petitioner on the ground that an extra increment was given to the petitioner during the tenure of her service. This Court is of the view that the prayer of the petitioner is squarely covered by the ratio of the judgment of the Hon'ble Supreme Court in ***Rafiq Masih's*** case (supra). The relevant portion of the aforesaid judgment is reproduced as under:-

“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 hereinabove, 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 the 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.”

Therefore, the action of the respondents in recovering an amount of Rs.91,921/- from the petitioner is contrary to the law laid down by the Hon'ble Supreme Court in **Rafiq Masih's** case (supra) as well as the instructions issued by the Government of Punjab in pursuance of the aforesaid judgment. No recovery could have been effected from her and the petitioner is entitled for the same alongwith interest @6% per annum from the date of deduction till the date of disbursement.

Learned counsel for the petitioner also submitted that besides the aforesaid refund amount, the petitioner was also entitled for the grant of interest on the overall gratuity which was paid to the petitioner on 27.11.2017 despite the fact that she has retired on 30.09.2016 and therefore she was entitled for grant of interest on the same as well. The aforesaid prayer of the petitioner is also just and proper and the petitioner is entitled for the grant of interest @6% per annum on that amount as well from 01.10.2016 till 27.11.2017.

So far as the second grievance of the petitioner is concerned, the dispute is with regard to the grant of earned leave. It is a case of the petitioner

that she was entitled for earned leave for a total period of 21 years which included her tenure prior to her regularization in view of the judgment of this Court in *Kesar Chand's* case (supra), whereas the case of learned State counsel is that as per the reply she was not entitled and she was entitled only for the period after regularisation and that too after deducting the earned leave which she has already availed of. Therefore, considering the aforesaid facts and circumstances, this Court is of the view that no doubt it is a settled law for the purpose of grant of pensionary benefits, the tenure of *ad hoc*, work charge and contractual basis has to be considered for calculating the pensionary benefits in case an employee is regularised subsequently. In the present case, as per learned counsel for the petitioner, the petitioner was regularised by the department and therefore the petitioner was certainly entitled for the fixation of pensionary benefits by counting the service prior to regularization. So far as the availing of the earned leaves by the petitioner is concerned, the same has been so disputed by learned counsel for the petitioner.

In view of the above, this Court deems it just and proper to direct respondent No.2-DPI (Elementary Education) to consider the aforesaid position with regard to the right of the petitioner for counting the past service prior to regularisation for grant of pensionary benefits and thereafter to calculate the earned leave after deducting the leaves actually availed of by the petitioner and thereafter shall pass a well reasoned speaking order in this regard within a period of four months from today after hearing the petitioner or her counsel. In case the petitioner is found to be entitled for the grant of

benefit of earned leave, then the amount of earned leave shall be paid to the petitioner alongwith interest @6% per annum.

All the amounts as aforesaid shall be paid to the petitioner within four months from today.

The petition stands partly allowed.

(JASGURPREET SINGH PURI)
JUDGE

March 28, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No