

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

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CWP-1403-2020 (O&M)
Date of Decision: 20.03.2024

Hafiz Ur Rehman KhanPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. R.S. Sidhu, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Vikram Jeet Singh, Advocate for respondent No. 3.

AMAN CHAUDHARY, J.(ORAL)

1. The present Civil Writ Petition has been filed under Articles 226/227 of the Constitution of India for quashing the impugned order dated 08.07.2014, Annexure P-1.
2. Learned counsel contends that prior to retirement of the petitioner on 31.07.2014, a recovery was ordered vide impugned letter dated 08.07.2014, citing incorrect pay fixation on account of an increment having been wrongly granted with effect from 01.01.1996. Subsequently, Rs. 91,001/- were recovered on 10.10.2014 and Rs. 16,030/- on 15.12.2014 by the respondents. Reliance is placed on **State of Punjab and others etc. vs. Rafiq Masih, (2015) 4 SCC 334**, stating that there was no fraud or misrepresentation committed.
3. On the contrary, learned counsel for the respondents submit that

since the petitioner had given an undertaking on 03.06.2014 (Annexure R-1), before he superannuated, that recovery of any excess payment of pension or gratuity received by him could be made, hence he could not escape the said deduction, in which regard reliance is placed on **High Court of Punjab and Haryana and others vs. Jagdev Singh**, 2016 (14) SCC 267.

4. Heard learned counsel on either side.

5. As is evident that the recovery sought to be made, was on the premise that an increment was erroneously accorded to the petitioner in the year of 1996, which besides being on the volition of the Department, it is also nobody's case that any undertaking was obtained from him prior thereto. The argument being canvassed on behalf of the respondents by pressing into service the generalized undertaking that was mandatorily to be submitted by all employees at the time of retirement, cannot be countenanced, in the wake of **Vinod Kumar vs. The Punjab State Power Corporation Ltd. and others**, CWP-18326-2020, decided on 18.01.2024, wherein the judgment as relied upon in **Jagdev Singh** (supra), was distinguished on basis of the aforesaid facts, which thus covers the case of the petitioner on all fours. Relevant paras thereof read as under:

“7. It is the case of the petitioner that he had retired as Lineman on 30.04.2019. After his retirement, an amount of Rs.3,24,260/- has been recovered from the gratuity of the petitioner. The plea taken by the respondents is that the benefit of two promotional increments was wrongly given on 28.03.1996 and the said mistake has been rectified. As per reply filed by the respondent-Corporation, the mistake was detected by the Audit Department and that is why recovery has been effected. Another argument which has been advanced by learned counsel for the respondent-Corporation is that an undertaking was given by the petitioner at the time of accepting the increment and retirement and therefore, judgment of Rafiq Masih (White Washer) and others case (Supra) will not apply.

8. Both the arguments raised by learned counsel for the respondent-Corporation are not sustainable. Firstly, even if an excess amount on the basis of wrong fixation of pay while granting benefit w.e.f 01.01.1996 was paid to the petitioner, the same cannot be recovered from him after his retirement. The action of the respondent Corporation is totally contrary to the law laid down by the Hon'ble Supreme Court in Rafiq Masih (White Washer) and others case (Supra) particularly in view of the fact that the petitioner retired as Lineman which falls in Class III (Group 'C' Category). 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 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.”

9. The facts and circumstances of the present case suggest that it is not the case of the respondent-Corporation that it was due to some fraud or misrepresentation of the petitioner that the said fixation of pay was made during his service but it was made by the respondent Corporation on their own and recovery has been effected after the retirement of the petitioner without issuing any show cause notice to him.

10. So far as the second argument raised by the learned

counsel for the respondent-Corporation that the petitioner had furnished an undertakings vide Annexures R-1 and R-2 are concerned, the same are also not sustainable in view of the fact that one of the undertakings i.e. Annexure R-2 was given by the petitioner at the time of retirement which is a stereotyped undertaking and is also generalized in nature. Undertaking, Annexure R-1, furnished by the petitioner also do not contain any date which indicates the time period thereof. Therefore, the furnishing of such an undertaking would not be of any avail to the respondent-Corporation. In the case of High Court of Punjab & Haryana and others Vs. Jagdev Singh : 2016(14) SCC 267, the Hon'ble Supreme Court was dealing with a particular situation whereby before granting the benefit of pay-scale to the employees, an undertaking was taken from the employees with regard to the fact that in case there is some recovery which is to be made thereafter, then the employees will have no objection with regard to the same and in this way, the employees were already put to notice with regard to a specific benefit which was to be conferred upon them. However, in the present case, the petitioner had already retired in the year 2019 whereas the benefit has been granted in the year 1996 and therefore, the facts and circumstances of the present case are totally distinguishable from the aforesaid judgment in Jagdev Singh's case (supra).

11. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by the judgment of Hon'ble Supreme Court passed in Rafiq Masih (White Washer) and others case (Supra) as the reliance placed upon the undertakings will not be relevant in present case.

12. Further, the recovery has been ordered by the respondents in violation of the principle of natural justice as neither any show cause notice was issued to the petitioner nor he was granted an opportunity of personal hearing.

13. Consequently, the present petition is allowed and the impugned order dated 06.02.2020 (Annexure P-12) whereby recovery has been effected from the petitioner is quashed. Respondents are directed to refund the amount of Rs.3,24,260/- of gratuity, as deducted, to the petitioner within a period of four months from the date of receipt of certified copy of this order along with interest @ 6% per annum.”

6. On a cumulative consideration of the facts and circumstances of the present case, in light of the afore-referred judgment, the impugned order is

liable to be and hereby set aside. As a corollary thereto, the respondents are directed to refund the amount recovered from the petitioner, along with interest at the rate of 6% per annum, within a period of three months from the date when a web-print of this judgment is received.

20.03.2024
Rajeev (rvs)

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned

:

Yes

Whether reportable

:

No