

(118)

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

LPA-424-2024 (O&M)
Date of decision : 08.02.2024

State of Punjab and others

.....Appellants

Versus

Gurvinder Singh Bedi

....Respondent

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Saurav Verma, Addl. Advocate General, Punjab.

G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The challenge in the present Letters Patent Appeal by the State is to the order of the learned Single Judge passed on 22.02.2023 in CWP-27265-2017.

2. This appeal is barred by 319 days. It is stated that certified copy of the impugned order was received on 21.03.2023. The draft LPA was received on 08.06.2023 and was sent for filing. The Legal Retainer had raised objections on 21.07.2023 and the appeal was again put up before the Legal Retainer on 09.08.2023. The case was sent to the Office of the Advocate General, Punjab, on 14.09.2023. The original copy of approval from the Government of Punjab was delivered to the Office of the Advocate General, Punjab, on 16.10.2023. The appeal was thereafter filed in February, 2024. The delay, as such, from October, 2023 to the date of filing of the appeal has still not been explained.

3. Even otherwise, the learned Single Judge as such granted benefit of quashing of recovery order for a sum of Rs. 1,72,954/-, which had been

deducted from the Gratuity of the respondent (petitioner in the writ petition) after his retirement, and has been ordered to be refunded to him within a period of four months along with interest @ 6% per annum. Reliance was placed upon the judgment of the Apex Court in “***State of Punjab and others Vs. Rafiq Masih (White Washer) and others***”, 2015 (4) SCC 334.

4. Learned Additional Advocate General, Punjab, has submitted that the respondent – employee retired on 31.08.2017 as Sub Divisional Officer from the Department of PWD (B&R). He has also brought to our notice the letter dated 29.06.2017 (Annexure A-1) by the employee, just prior to his retirement, which was in context of the letter of Accountant General, Punjab, dated 29.05.2017, whereby he consented that after re-fixing his salary, the recoverable amount may be deducted from the balance of his earned leave/ leave encashment.

5. It is in such circumstances that learned State counsel has relied upon judgment of the Apex Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh, 2016 (14) SCC 267***, to submit that designation as such of the employee in this case was not that of Group ‘C’ or Group ‘D’ and the benefit of ***Rafiq Masih’s case*** (supra) should not have been granted to him, once he had given his consent.

6. Firstly, the consent letter dated 29.06.2017 (Annexure A-1) was never placed before the learned Single Judge and it is now in the present appeal that the argument in this regard is being raised for the first time. Therefore, we are not inclined to take it into account as the said letter was already in knowledge of the State. Rather, the said letter is damaging to the case of the appellants themselves. It is not disputed that the employee was on extension from 01.09.2015 to 31.08.2017 and his pay had been fixed on

10.04.2015. Thus, the Office of the Accountant General, Punjab, was already seized of the matter. The said exercise of recovery should have necessarily been made on 31.08.2015, when he was to retire. Normally, extension in service is given after examining all the record of the employee to see whether there is any amount due, or departmental proceeding(s) is pending.

7. Secondly, the *Letter of Consent* relied upon by learned Additional Advocate General, Punjab, does not come to his aid. The *Letter of Consent* dated 29.06.2017 (Annexure A-1) pertained to the excess amount to be recoverable from the balance of the petitioner's earned leave/leave encashment, in case any amount was recoverable, after re-fixation of salary. However, vide impugned notice dated 14.09.2017 (Annexure P-4), a sum of Rs. 1,72,954/- has been withheld out of the gratuity amount of the petitioner. Same is clearly hit by the provisions of the Payment of Gratuity Act, 1972, the relevant Section of which is reproduced herein below :

“4. Payment of gratuity – (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

(a) On his superannuation, or

(b) On his retirement or resignation, or

(c) On his death or disablement due to accident or disease;

X X X

(6) Notwithstanding anything contained in sub-section (1) –

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited] –

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

8. It is in such circumstances that the learned Single Judge has brought the employee within exception (ii), as laid down in **Rafiq Masih’s case** (supra), that the recovery from retired employees, or employees who are due to retire within one year, of the order of recovery, would be impermissible.
9. The judgment in **Jagdev Singh’s case** (supra) pertains to a Judicial Officer and also where he had given an undertaking that if re-fixation of pay is done at subsequent point of time, he would be bound by the same. In these peculiar facts and circumstances, the Apex Court had distinguished the case from Rafiq Masih and, therefore, the said judgment is not applicable to the facts and circumstances of the present case.
10. Resultantly, there is no merit in the appeal.
11. Accordingly, the application (CM-1006-LPA-2024) for condonation of delay and the appeal are dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

February 08, 2024
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No