

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.119

CWP-4282-2024

Date of decision : 26.02.2024

Union of India and others

..... Petitioners

Versus

Bhagat Ram and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr.Ashish Rawal, Advocate, for the petitioners.

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DEEPAK SIBAL, J. (Oral)

1. The Union of India has petitioned this Court to challenge therein order dated 18.08.2023 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, the Tribunal) allowing respondent No.1's original application through which respondent No.1 had challenged the deduction of Rs.70,707/- from his retiral benefits.

2. In *State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.* AIR 2015 SC 696 the Supreme Court has held as follows: -

"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 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 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) xxx xxx xxx

(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."

3. As per the afore reproduced portion of the judgment of the Supreme Court in *Rafiq Masih's* case (supra) recoveries of payments which have mistakenly

been made by the employer in excess of their entitlement to the employees belonging to Class-III and Class-IV service; retired or employees who are due to retire within one year; from employees when the excess payment had been made for a period in excess of five years before the order of recovery is issued and 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 that the same would far outweigh the equitable balance of the employer's right to recover, have been held to be impermissible in law.

4. It is not disputed that respondent No.1 retired as a Class-III employee on 13.12.2017 and that recovery of Rs.70,707/- was sought to be made from him after his retirement for an event which took place in July 2010 i.e. about 7½ years ago.

5. In the light of the above, the case of respondent No.1 is fully covered in his favour by the directions given by the Supreme Court in *Rafiq Masih's* case (supra). Therefore, we find no error, in fact or in law, in the impugned order of the Tribunal especially when in the facts of the present case where the recovery impugned by respondent No.1 was made without issuance of any show cause notice to him and without supplying of any reasons as also because there was no misrepresentation or fraud by respondent No.1 at the time when he received the amount sought to be recovered from him.

6. Dismissed.

[DEEPAK SIBAL]
JUDGE

26.02.2024
shamsher

[DEEPAK MANCHANDA]
JUDGE

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