

112

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5944-2024
Date of decision: 14.03.2024

Sunil Kumar Grover ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Risham Raag Singh, Advocate for the petitioner.
Mr. TPS Walia, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the Notification/Circular dated 01.11.2021 (Annexure P-2) issued by respondent No.4 and office order No.133 dated 13.03.2023 (Annexure P-3) issued by respondent No.3 to the extent it orders for recovery as a consequence of reduction/refixation of pay of the retiree petitioner w.e.f. 01.12.2011.

2. Learned counsel for the petitioner has submitted that the petitioner is not challenging re-fixation of his pay but is making limited prayer to the effect that no recovery is to be effected from him as the petitioner had already retired on 31.08.2016. In support of the said arguments, he has relied upon a judgment of the Hon'ble Supreme Court in State of Punjab and others Vs. Rafiq Masih (White Washer) etc. reported

as 2015(14) SCC 334, para 12 of the said judgment has been highlighted and the relevant portion of the same is reproduced herein below: -

“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 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.*

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the

reasons recorded above.”

3. Learned counsel for the petitioner has submitted that a perusal of above-said para would show that the Hon'ble Supreme Court had summarized certain situations wherein the recoveries by the employers would be impermissible in law, where the payments had been made mistakenly by the employer, in excess of entitlement to the employee and one such situation, as provided under Clause (ii) of Para 12, was recovery from retired employees or employees who are due to retire within one year, of the order of recovery. It is stated that the case of the present petitioner is squarely covered under the said clause (ii) as it is not in dispute that the petitioner before this Court is a retired employee.
4. Learned State counsel has not able to dispute the law laid down in the above-said judgment and has no objection to the said limited prayer made by learned counsel for the petitioner.
5. Keeping in view the above-said facts and circumstances, the present writ petition is allowed to the extent that no recovery in pursuance of the impugned action of the respondent authorities would be effected from the present petitioner.
6. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

14.03.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No