



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

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CWP-8616-2021**Date of decision : 20.08.2024**

Mohammad Ramzan

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Ms. Sonia G. Singh, Advocate
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Rakesh Roy, Advocate for
Mr. Abhilaksh Gaind, Advocate
for respondents No.4 & 6.

NAMIT KUMAR, J. (Oral)

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 15.11.2019 (Annexure P-3), vide which recovery has been ordered against the petitioner in view of re-fixation of his pay. Further seeking a writ of mandamus, directing the respondents to release the complete retiral benefits of the petitioner after calculating the pension under the amended Act dated 29.03.2018 of Payment of Gratuity Act, 1972, vide which the gratuity amount has been increased to 20 lakhs, and to pay interest @ 18% on the delayed payment of retiral benefits.

2. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner joined the service of respondent No.5 as

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Pump Operator on 01.09.1981. On 30.08.1983, he was transferred to the office of respondent No.4 and on attaining the age of superannuation on 31.05.2019, he has retired from service as such. The total gratuity of the petitioner under the Payment of Gratuity Act, 1972 as amended vide notification dated 29.03.2018 vide which the maximum limit has been enhanced to 20 lakhs, comes to Rs.12,84,253/- and leave encashment comes to Rs.6,33,660/-. However, at the time of retirement of the petitioner, only leave encashment was paid to him and remaining amount was kept pending. After the retirement of the petitioner, vide impugned order dated 15.11.2019, a recovery notice and order of re-fixing of pay and pension of the petitioner was passed on the pretext of enhanced payment of increment to him without granting an opportunity of hearing to the petitioner. The petitioner served a legal notice dated 10.01.2020 to the respondents against order dated 15.11.2019. The respondents vide letter dated 31.08.2020 gave a detailed reply to the legal notice stating therein that the petitioner is entitled to Rs.10,00,000/- on account of gratuity and Rs.6,25,630/- on account of leave encashment and a recovery of Rs.4,17,460/- was pending against the petitioner due to wrong fixation of pay and after recovery of said amount, amount of Rs.12,08,170/- has been paid to the petitioner. Hence, this petition.

3. Learned counsel for the petitioner submits that the petitioner has already retired from service on attaining the age of superannuation on 31.05.2019 and after his retirement, an amount of Rs.4,17,460/-, being alleged excess payment made to him in the year

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2012, has been recovered from his retiral dues, vide order dated 15.11.2019. She submits that the abovesaid recovery has been effected from the retiral dues of the petitioner, without issuance of any show cause notice or granting any personal hearing in unilateral manner, which is not only in violation of the principles of natural justice but also against the law laid down in judgment of the Hon'ble Supreme Court passed in *State of Punjab Vs. Rafiq Masih (White Washer) and others* : 2015(1) S.C.T. 195.

4. During the course of hearing, learned counsel for the petitioner restricts her claim qua the impugned order dated 15.11.2019 only and seeks liberty to approach the Controlling Authority under the Payment of Gratuity Act, 1972 for claiming the enhanced amount of gratuity.

5. On the other hand, learned counsel for contesting respondents No.4 and 6, while referring to the averments made in the reply, submits that there is no illegality or infirmity in the impugned recovery effected, as the petitioner had wrongly been given excess payment at the time of re-fixation of pay in the year 2012 and accordingly recovery of Rs.4,17,460/- has been effected from the retiral dues of the petitioner. He further submits that the petitioner had also given undertaking dated 15.11.2019 (Annexure R-4/1) stating therein that if any excess payment is made to him or any recovery is found by the audit, he shall be bound to deposit the same or Municipal Council will be entitled to effect recovery of the same from his pension/LTC. In support of his contention, learned counsel for the respondents has



placed reliance upon the judgment in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh : 2016(14) SCC 267.***

6. I have heard learned counsel for the parties and perused the relevant documents.

7. The argument raised by learned counsel for respondents No.4 and 6 is not sustainable as even if an excess amount on the basis of wrong fixation of pay was paid to the petitioner in the year 2012, the same cannot be recovered from him after his retirement after a lapse of 07 years. The action of the respondent is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (Supra)***. The relevant portion of the aforesaid judgment is reproduced as under:-

“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.”

8. The facts and circumstances of the present case suggests that it is not the case of the respondents that it was due to some fraud or misrepresentation of the petitioner, who was working against Class III post, that he was granted excess payment but it was granted by the respondents on their own.

9. So far as the argument raised by the learned counsel for the respondents that the petitioner had furnished an undertaking vide Annexures R-4/1 is concerned, the same is also not sustainable in view of the fact that firstly, the date on the said undertaking is 15.11.2019, whereas the recovery, for the excess salary paid, is being made for the year 2012 and secondly, the said undertaking is a stereotyped undertaking and is also generalized in nature. Therefore, such an undertaking would not be of any avail to the respondent-Corporation. In ***Jagdev Singh's case (supra)***, 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 benefit has been granted in the year 2012 and the recovery has been effected in the year 2019, therefore, the

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facts and circumstances of the present case are totally distinguishable from the aforesaid judgment in *Jagdev Singh's case (supra)*.

10. Moreover, the recovery has been ordered by the respondent-Corporation in violation of the principles of natural justice as neither any show cause notice was issued to the petitioner nor he was granted an opportunity of personal hearing.

11. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by Clauses (i), (ii) and (iii) of para 12 of the judgment of Hon'ble Supreme Court passed in *Rafiq Masih (White Washer) and others case (Supra)*.

12. Consequently, the present petition is partly allowed and the impugned recovery of Rs.4,17,460/- effected from the retiral dues of the petitioner is set aside. The respondent No.4 is directed to refund the amount, deducted from the retiral dues, to the petitioner, within a period of 02 months from the date of receipt of certified copy of this order, along with interest @ 6% per annum from the date the same was effected from the petitioner till its actual payment.

13. So far as claim of the petitioner for grant of enhanced amount of gratuity is concerned, liberty is granted to the petitioner to approach the concerned Controlling Authority for redressal of his claim under the Payment of Gratuity Act, 1972.

20.08.2024

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**(NAMIT KUMAR)
JUDGE**

Whether Speaking/reasoned Yes/No

Whether Reportable Yes/No