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

(232) **CWP No. 11994 of 2020 (O&M)**
Date of Decision : 28.10.2024

Prem Lal Bhanot

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Fateh Singh Dhillon, Advocate for the petitioner.

Mr. Satnam Preet Singh, Deputy Advocate General, Punjab.

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Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the order dated 19.06.2017 (Annexure P-4) by which recovery of ₹1,27,466/- has been imposed upon the petitioner on the ground that after the retirement, the pay of the petitioner has been revised, due to which the excess amount paid to the petitioner needs to be recovered.

2. Learned counsel for the petitioner argues that no recovery can be done from a retired employee and further that any benefit, which was extended to an employee and the employee continued to get the same for a period of five years and even if the same is withdrawn, no recovery can be done keeping in view the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195,*** hence the recovery being done from the retiral benefits of the

petitioner is liable to be rejected as according to the respondents, the pay was wrongly fixed w.e.f. 01.01.2006, which period is beyond 05 years.

3. Learned State counsel submits that once, the pay of the petitioner was wrongly fixed w.e.f. 01.01.2006, excess amount paid to the petitioner can be recovered as the same is not beyond the entitlement of the petitioner.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. The question whether, the recovery can be done from an employee is already settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, wherein following has been held in paragraph 12 of the said judgment :-

> *"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:-*
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> *(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."

6. In the present petition, it is a conceded fact that the recovery was being done from the petitioner in April, 2017 whereas, the petitioner had already retired in March, 2017. Further, the recovery was being done qua a benefit which the petitioner continued to avail for a period of 11 years before the same was withdrawn, said fact has gone unrebutted.

7. Learned counsel for the respondents has not been able to rebut the claim of the petitioner that the same is covered by the judgment in ***Rafiq Masih's case (supra).*** Even otherwise, the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022,*** has held that where an employee was not at fault with regard to the extension of benefit and there is no representation on behalf of the employee concerned to get the emoluments beyond his/her entitlement, the recovery cannot be made. The relevant paragraph of the said judgment is as under:-

"(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or

allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."

8. In the present case, there is no misrepresentation on the part of the petitioner to claim the said amount, hence, the recovery which is being done from the petitioner's pensionary benefits is arbitrary, illegal and contrary to the settled principle of law, hence, the said order of recovery of excess amount paid to the petitioner is set-aside. In case, the amount has been recovered from the pensionary benefits, the same be refunded back to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

9. Petition is allowed in above terms.

10. Pending miscellaneous application, if any, also stands disposed of.

October 28, 2024 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No