IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(206) **CWP-5054-2010**
Date of Decision : September 09, 2024

Sunita Nanda **.. Petitioner**

Versus

State of Punjab and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Bajaj, Advocate, for the petitioner.

Mr. T.P.S. Chawla, Sr. Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 03.03.2010/11.03.2010 (Annexure P-4) by which, the pay of the petitioner has been re-fixed and the recovery was ordered to be made.

2. While issuing notice of motion, the Coordinate Bench of this Court vide order dated 22.03.2010, stayed the recovery. Thereafter, the petitioner retired from service but despite the interim order, the recovery amount was deducted from his pensionary benefits.

3. Learned counsel for the respondents submits that vide order dated 06.09.2020, the recovery of Rs.77,195/- done, has already been ordered to be released in favour of the petitioner.

4. Learned counsel for the petitioner submits that in the present case, 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*** as well as in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022,*** no recovery can be done from the petitioner even after refixation of her salary especially when there was no misrepresentation on the part of the petitioner and further that the benefit sought to be withdrawn by re-fixation of the salary, was paid to the petitioner for a period of more than five years from the date the same was sought hence, the recovery sought to be done from the petitioner upon refixation of her salary is liable to be set aside.

5. Learned counsel for the respondents has not been able to dispute the fact that the salary of the petitioner was fixed by the respondents themselves and thereafter, certain benefit granted, was withdrawn in order to make recovery.

6. Learned counsel for the respondents submits that keeping in view the fact that the pay of the petitioner has wrongly fixed though there was no misrepresentation on the part of the petitioner but as the petitioner was not entitled for certain amount, which has already been paid, the recovery has rightly been done from the petitioner.

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

8. As per the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra),*** in case, an employee has been given a particular benefit for more than five years and the employee was working as

Junior Assistant, which is a class III post, no recovery could have been done. The relevant paragraph 12 of the said judgment is 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."*

9. Even otherwise, as per the judgment of the Hon'ble Supreme Court of India in ***Thomas Daniel's case (supra),*** in case there is no misrepresentation on the part of the employee to claim any benefit, no recovery can be done. 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."

10. Keeping in view the above, the order of recovery of Rs.77,195/- is contrary to the settled principle of law and is set aside.

11. As noticed earlier, the Coordinate Bench of this Court while issuing notice of motion on 22.03.2010, the recovery was stayed but still, the respondents choose to recover the amount from the retiral benefits of the petitioner, which is arbitrary and illegal and in fact, the recovery was done contrary to the order passed by the Coordinate Bench of this Court. Though an order has been passed on 06.09.2024 to return Rs.77,195/- to the petitioner which was recovered at the time of his retirement but as the said amount could not have been recovered and the respondents had retained the said amount for a period of five years, the petitioner will be entitled for

interest from the date the said amount was deducted till the actual re-payment of the same, @ 6% per annum keeping in view the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs*. *State of Haryana, 2014(13) RCR (Civil) 355***. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

> *"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

12. The present writ petition is allowed in above terms.

13. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.

September 09, 2024 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

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