

CWP-18789 of 2016

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

CWP-18789 of 2016
Reserved on: 31.01.2024
Pronounced on: 06.02.2024

Sh. Daljit Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Inderjit Sharma, Advocate,
for the petitioner.

Mr. Ajit Singh Natt, AAG, Punjab.

Mr. Shashi Kumar Yadav, Advocate,
for respondent No.3.

NAMIT KUMAR, J.

1. Petitioner has invoked the extraordinary jurisdiction of this Court by filing present writ petition under Articles 226/227 of the Constitution of India, seeking a writ of *mandamus* for directing the respondents to release the amount of Rs.70,000/- which has been deducted by the respondents on account of wrong fixation of salary/excess payment.

2. Brief facts, as have been pleaded in the petition, are that the petitioner had joined as Clerk on 15.10.1981 in the office of respondent No.3 – Municipal Council, Gurdaspur and retired from service on 31.07.2014 on attaining the age of superannuation. It has been pleaded that the respondent-department has recovered a sum of Rs.70,000/- from the petitioner in instalments from year 2010 to 2013

from the account of the petitioner on the ground that salary of the petitioner was wrongly fixed and excess payment was made to him. Petitioner submitted a representation dated 12.05.2016 to the respondents for releasing the deducted amount of Rs.70,000/- as per law laid down by the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others, 2015(1) SCT 195.*** But no action has been taken on the said representation, therefore, petitioner has approached this Court through instant writ petition.

3. Separate written statements have been filed on behalf of respondents No.1 & 2 and respondent No.3-Municipal Council, Gurdaspur. In its reply, respondent No.3 has taken the following stand:

“(II) That the present Civil Writ Petition is not maintainable as the petitioner has suppressed the true and material facts and has not come to the Hon'ble Court with clean hands. The petitioner has filed the present Writ Petition for issuance of a writ in the nature of mandamus directing the respondents to release the amount pertaining to petitioner amount of Rs. 70,000/- which had deducted by the respondents in installments from the year 2010 to 2013 on account of wrong fixation of salary/excess payment received by the employee. The petitioner has suppressed the true and material facts that an amount of Rs.68631/- was recovered by the answering respondent from the petitioner during the period 2006 to 2018. This amount was paid in excess to the petitioner due to wrong fixation of salary and same has been objected by the audit department in his report.”

4. Learned counsel for the petitioner submits that since there was no mis-representation on behalf of the petitioner, therefore, no

recovery could have been effected by the respondents. He has placed reliance on the judgment of the Hon'ble Supreme Court in ***Rafiq Masih's case (supra)***.

5. *Per contra*, learned counsel for respondent No.3 submits that since amount of Rs.68,631/- has been recovered from the petitioner as the same was paid in excess due to wrong fixation of salary as the objection was raised by the audit department, therefore, the said amount has already been deducted in instalments, therefore, no cause of action arises to the petitioner to file the present writ petition as the same is not maintainable.

6. I have heard learned counsel for the parties and perused the record of the case.

7. Admittedly, the excess payment of Rs.68,631/- has been made to the petitioner, who stood retired as Class-III employee on 31.07.2014, on account of wrong fixation of salary, which was recovered during the year 2006-2013 by way of instalments. It is admitted fact that recovery was made during the year 2006 to 2013 but none of the sides have intimated this Court about the period of pay fixation, when mistake had been committed, however, there was no mis-representation on the part of the petitioner. The petitioner had given representation dated 12.05.2016 to this effect but to no avail.

8. Hon'ble Supreme Court in ***Rafiq Masih's case (supra)*** has held 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. The facts and circumstances of the present case suggests that it is not the case of respondent No.3/Department that petitioner has given any undertaking to this effect during his service for recovering the same nor it was on account of any fraud or misrepresentation of the petitioner. But it was made by the department on their own and recovery has been effected without giving any calculation to him.

10. In view of the above, present petition is allowed. Respondents are directed to refund the amount to the tune of Rs.68,631/- to the petitioner @ 6% interest per annum within a period of three months from the date of receipt of certified copy of this order.

06.02.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No