

CM-1087-CWP-2024 ;
CM-1406-CWP-2024 ;
CM-1160-CWP-2024 in/and
CWP-20361-2021

2024:PHHC:168715



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105+232)

CM-1087-CWP-2024 ;
CM-1406-CWP-2024 ;
CM-1160-CWP-2024 in/and
CWP-20361-2021
Date of Decision : 17.12.2024

Pankaj Bansal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Virinder Kumar Shukla, Advocate and
Mr. Ashish Gupta, Advocate for the petitioner.

Mr. Arun Gupta, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-1087-CWP-2024, CM-1406-CWP-2024 and CM-1160-CWP-2024

Present applications have been filed for placing on record replications to the written statement filed on behalf of respondents No. 1 to 3, respondent No. 4 and respondent No. 5 respectively.

Applications are allowed and replications to the written statement filed on behalf of respondents No. 1 to 3, respondent No. 4 and respondent No. 5 respectively are taken on record with all just exceptions.

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In the present petition, the grievance being raised by the petitioner is that certain deductions have been made while extending payment

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of the pensionary benefits to the petitioner, which is arbitrary and illegal, hence, the recovery of excess amount paid which has been made from the petitioner, be set-aside as the same cannot be made after the retirement.

Learned counsel for the respondents on the other hand submits that the petitioner has given an affidavit, wherein, the petitioner agreed to the recovery of the excess payment made by giving an undertaking, copy of which has been appended as Annexure R/3 and once, there is an undertaking given by the petitioner for recovery of the excess payment made, the petitioner cannot claim that no recovery can be done, especially when there is no challenge to re-fixation of the salary of the petitioner.

Learned counsel for the respondents submits that where an undertaking has been given, 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* will not be applicable and the judgment of Hon'ble Supreme Court of India in Civil Appeal No. 3500 of 2006 titled as *High Court of Punjab & Haryana and others Vs. Jagdev Singh*, decided on 29.07.2016 will be applicable, according to which, where an employee has given an undertaking, the same has to be complied with even if the recovery is to be made.

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

In the present petition, it is a conceded fact that certain benefits beyond the entitlement of the petitioner were given to him and the petitioner



had given an undertaking that in case, any benefit which is given to the petitioner beyond his entitlement, the recovery can be made.

Thereafter also, the petitioner has undertaken to refund the excess amount by even mentioning the amount in undertaking. Once, the petitioner has undertaken to refund the amount, the question which arises is whether the petitioner can be allowed to argue that as per the judgment of ***Rafiq Masih (White Washer) etc. (supra)***, no recovery can be made.

The Hon'ble Supreme Court of India after considering the judgment in ***Rafiq Masih (White Washer) etc. (supra)***, passed the order in ***Jagdev Singh's case (supra)***. The relevant paragraph-11 of the judgment in ***Jagdev Singh's case (supra)*** is as under :-

“The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

Keeping in view the above, the Hon'ble Supreme Court of India has held that where an undertaking has been given by an employee to refund the amount in case the same was paid in excess, the recovery can be done. By applying the judgment in ***Jagdev Singh's case (supra)***, it may be noticed that not only the undertaking was given but, petitioner also mentioned the amount that he will return the amount along with interest. Once, the

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undertaking is not in dispute, the argument that recovery cannot be made despite undertaking, cannot be accepted, especially when, there is no denial that the benefit granted to the petitioner was beyond his entitlement.

No ground is made out for any interference by this Court in the present petition.

Dismissed.

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

December 17, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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