



CWP-5297-2016 (O&M)

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

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Date of Decision :25.07.2024

Beant Singh**...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. S.K. Arora, Advocate for the petitioner.

Mr. Amar Preet Singh Bains, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

In the present petition, challenge is to the orders (Annexures P-5, P-7, P-9 and P-11) by which, annual increments granted to the petitioner were withdrawn and excess amount paid on account of grant of those increments, was sought to be recovered from the petitioner.

While issuing notice of motion, recovery of the excess amount paid was stayed by this Court on 18.03.2016.

Learned counsel for the petitioner submits that the respondents had granted the petitioner benefit of annual increment and now after withdrawing the same, recovery of amount paid is being done, which action of the respondents is arbitrary and illegal especially, when the petitioner has already retired from service and unfortunately, thereafter, died hence, keeping in view the facts and circumstances of the present case, the respondents be restrained from recovering the excess amount.

Learned counsel for the respondents on the other hand submits

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that once, the petitioner was granted the benefit of increments despite the fact that he was not entitled for the same, recovery can be done from the petitioner especially, when the petitioner was in service on the date when the impugned orders (Annexures P-5, P-7, P-9 and P-11) were passed though, he subsequently retired on 31.05.2016 and unfortunately died during the pendency of the present petition.

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

Qua the argument being raised by the learned counsel for the petitioner that refixation of salary of the petitioner is bad as petitioner was qualified for the grant of increment, it may be noticed that the increment is to be granted in case employee clears departmental examination and in the present case increment was granted to the petitioner w.e.f. 01.01.1987 though, the exemption was granted to the petitioner to pass the departmental examination in the year 2002. That being the case, the grant of increments prior to the date when the exemption to pass departmental examination was granted to the petitioner was not as per the entitlement of the petitioner. Once, the benefit of increment was given for the period when the petitioner had not passed the departmental examination, withdrawal of the increments by the respondents for the period when petitioner was ineligible to get the increment cannot be treated to be bad.

The question which arises is, whether the respondents were within their jurisdiction to recover the excess payment made to the petitioner.



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It may be noticed that the increments were granted to the petitioner by the respondents themselves without there being any misrepresentation on the part of the petitioner. Once, the petitioner had not misled the department in getting the benefit of increments, 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,** recovery cannot be made from the petitioner as the increments were given for a period of 05 years, which was sought to be withdrawn. Even as per the judgment of Hon'ble Supreme Court of India in **Civil Appeal No.7115-2010** titled as **Thomas Daniel vs. State of Kerala and others** has held that where there is no misrepresentation on the part of the employee, no recovery of the excess amount paid, can be done.

Further, the petitioner retired from service and unfortunately died during the pendency of the present petition.

While issuing notice of motion, recovery of the excess amount paid was stayed by this Court on 18.03.2016 hence, keeping in view the facts and circumstances of the present case, coupled with the settled principle of law in **Rafiq Masih (supra)** and **Thomas Denial (supra)** though, the respondents are held entitled for re-fixation of salary of the petitioner however, recovery of the excess amount cannot be done from the petitioner.

Keeping in view the above, present petition is disposed of in the above terms with direction to the respondents that no recovery of excess amount paid not be done from the petitioner.

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Civil miscellaneous application pending, if any, is also disposed of.

July 25, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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