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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP No.27459 of 2017 (O&M)
Date of decision: 16.04.2024

Naib Singh
.....Petitioner

Versus

State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rakesh Sobti, Advocate
for the petitioner.

Ms. Arundhati Kulshreshtha, AAG, Punjab.

NAMIT KUMAR J. (Oral)

1. Challenge in the instant petition is to the order dated 28.11.2017 (Annexure P-14) whereby a total recovery of Rs.3,67,834/- has been directed and to be recovered within a period of 24 months on the basis that the fixation of pay done in the year 1996 when the petitioner was promoted as Research Officer was incorrect.
2. Brief facts of the case, as have been pleaded in the petition, are that the petitioner joined as Technical Assistant/Assistant Research Officer in the Punjab State Planning Board in the year 1991. He was promoted as Research Officer on 09.05.1996 in the pay-scale of Rs.7880-11660/-. Thereafter, he was further promoted to the post of Deputy Director on 19.02.2016. For impugning the order dated 28.11.2017 (Annexure P-14), reliance is placed upon the Punjab Civil Services (Revised Pay) Rules, 1998 and under which the revised scale indicated for the post of Research Officer was from Rs.2410-4000/- to

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Rs.7880-11660/-. Counsel urges that fixation of pay of the petitioner in the year 1996 on the post of Research Officer was as per the Revised Pay Rules. Second submission raised by counsel is that in the impugned order, there is no basis disclosed as regards the alleged wrong fixation relating back to the year 1996 and rather recovery is being directed only on account of the fact that an undertaking had been procured from the petitioner on 02.03.2017 (Annexure P-8) with regard to accepting any discrepancy as regards re-fixation of the pay which may be found in future.

3. Written statement has been filed by respondents No.1 to 3 wherein the claim of the petitioner has been opposed by averring as under:-

“1. That Naib Singh(petitioner) was promoted as research officer on 9-5-1996. The unrevised pay scale of the post of Research Officer on 1-1-1996 was Rs. 2410-4000 Thereafter, the Govt. vide notification dated 16-01-1998 (Annexure P-3) issued Revised Pay Rules, 1998 applicable w.e.f. 1.1.1996. The schedule attached to the Revised Pay Rules, 1998 converted the unrevised Pay scales into revised scale w.e.f 1.1.1996 without mentioning any post, vide which the Pay scale of Rs. 2410-4000 was revised to Rs. 7880-11660 w.e.f.1-1-1996. As such, the petitioner was granted the pay scale of Rs. 7880-11660, w.e.f. 9.5.96 i.e. the date of his promotion as Research Officer. Later on, the Govt. vide notification No.7/1/97-FP1/7370 dated 19-5-1998(Annexure R-1) issued Punjab Civil Services (Revised Pay) (First Amendment) Rules, 1998 (The Second Schedule) indicating category/post-wise Pay Scales, was issued in which the Pay Scale of the post of Research Officer was given as under:

Sr. No.	Name of the category/ Post	Existing Pay Scale (in Rs.)	Revise Pay Scale (in Rs.)	Remarks
1	Research Officer	2410-4000	7220-11660	The existing incumbents in the Scale of Rs.2410-4000 are allowed the revised equivalent of Rs.7880-11660 as a measure personal to them.

2. That the office, then, continuation the Revised Pay Scale of Rs. 7880- 11660 to the petitioner which was already granted to him from the date of his promotion as Research Officer on 9-5-1996. In October, 2015 the office reviewed the benefits of Assured Career Progression scheme granted to the petitioner on the basis of the above Pay Scale of Rs. 7880-11660 instead of Rs.7220-11660 and referred the case to Internal Audit Cell of the Directorate of Treasury & Accounts Punjab. The Internal Audit Cell vide Note dated 26-2-2016 observed that the Pay Scale of Rs. 7880-11660 was to be given as a personal measure to those employees who were working on the post of Research Officer prior to 1-1-96.They further observed that since Sh. Naib Singh was promoted to the post of Research Officer on 9-5-1996 as such he was not required to be protected in the Pay Scale of Rs. 7880-11660, rather (instead) his pay was to be fixed in the Pay Scale of Rs. 7220-11660.

3. That in view of the above observation of the Internal Audit Cell, the office vide office order No. PSPB(6PB)Pay Fixation/2016/2935-2941 dated 1-6-2016

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(Annexure-P/6T) refixed the pay of Sh. Naib Singh on the post of Research Officer in the Pay Scale of Rs. 7220-11660 w.e.f. 9-5-1996 i.e. the date of his promotion as Research Officer.

4. That it is further submitted that on dated 14-06-2016 Petitioner submitted an option to fix his pay from the date of annual increment i.e. 01-09-1996 of lower post means Assistant Research Officer in accordance with the Pay Rules, 1988 and 1996. Thereafter, in reference to his option dated 14-06-2016 (P-7), the petitioner on 02-03-2017 (P-8) submitted an undertaking that in view of the advice of the Finance Department (Internal Audit Cell), if any discrepancy is found in future in this re-fixation of his pay w.e.f. 09-05-1996 or if any recovery is to be made, then he will be fully responsible to deposit that recovery in the Treasury of the Government. The office vide office order No. PSPB(6PB)-Pay Fixation/2017/507-512 dated 02-03-2017 (P-10) re-fixed the pay of the petitioner as per option furnished by him.

5. That it is submitted that consequent upon re-fixation of pay of the petitioner w.e.f. 9-5-1996 in the Pay Scale of Rs. 7220-11660 in place of the Pay Scale of Rs. 7880-11660, an amount of Rs. 3,67,834 has been calculated to be recovered from the petitioner. Before making recovery, a notice dated 4-10-2017/10-10-2017 (Annexure P-11) was issued to the petitioner. In reply to the notice, the petitioner gave representation dated 27-10-2017 (Annexure P-13/T) vide which he referred to the instructions issued by the Department of Finance Punjab vide No4/118/09-1FPPC/575043/1 dated 28-8-2015 (P-9) in view of judgment of Hon'ble Supreme Court of India in case of State of Punjab V/s Rafiq Masih and others. The representation was duly considered and it was found that

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the above instructions dated 28-8-2015 were amended by the Government vide No.4/118/09- 1FPPC/862281/1 dated 20-10-2016 in view of the order dated 29-7-2016 of Hon'ble Supreme Court of India in Civil Appeal No. 3500 of 2006 (Annexure R-2) Para 3 of these instructions is reproduced as under:-

"In view of the above orders dated 29.7.2016 of Hon'ble Supreme Court of India in Civil Appeal No. 3500 of 2006, the principal enunciated in proposition (ii) above cannot apply to a situation where the employee to whom the payment 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 in reasonable installments. In case any employee furnishes an undertaking for refund of any payment if later on found to be excess due to revision of pay scale or otherwise then he is bound by the undertaking".

6. That Naib Singh Deputy Director had given an undertaking on 2-3-2017, as under for the recovery of excess amount if any found in future:-

With regard to my application dated 14.6.2016 submitted in view of the advice of the Finance Department (Internal Audit Cell) if any discrepancy is found in future in the re-fixation of my pay with effect from 9-5-1996 or if any recovery is to be made, then I will be fully responsible to deposit that recovery in the Government Treasury."

In view of the above instructions, the recovery can be made from the petitioner, hence the representation dated 27-10-2017 submitted by him was rejected and office order for making recovery was issued vide No. PSPB(2PB)-Pay Recovery-2017/5081-86 dated 28-11-2017. (Annexure P-14) The recovery has been held in abeyance in compliance with the order of the Hon'ble High Court passed in this C.W.P. on 13-12-2017."

4. Learned counsel for the petitioner submits that during the

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pendency of the present petition, the petitioner has attained the age of superannuation on 31.05.2021 and has retired from service and an amount of Rs.3,67,834/-, has been withheld by the respondents from the retiral benefits of the petitioner. He further submits that since there is no misrepresentation on the part of the petitioner, therefore, the impugned recovery made by the respondents is totally illegal and arbitrary and is in violation of the law laid down by the Hon'ble Supreme Court in the judgment "***State of Punjab vs Rafiq Masih (White Washer) and others***", 2015(1) SCT 195, and thus, the said amount is liable to be refunded to the petitioner along with reasonable rate of interest.

5. Learned counsel for the respondents could not dispute the abovesaid legal position, however, opposed the submissions made by learned counsel for the petitioner on the ground that since the petitioner has been promoted to the post of Research Officer after 01.01.1996, therefore, he is not entitled for the pay-scale of Rs.7880-11660/- and was entitled for the pay-scale of Rs.7220-11660/- and since the pay-scale of Rs.7880-11660/- was wrongly granted, therefore, the recovery has rightly been ordered to be effected from the petitioner.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. The petitioner by way of filing the present petition has impugned the order of recovery by relying upon the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (supra)***. The relevant portion of the said judgment is reproduced as under:-

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“18. 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.”

8. The facts and circumstances of the present case suggests that it is not the case of the respondent – State that it was due to some fraud or misrepresentation of the petitioner that the said has been withheld rather the respondent – State on their own has withheld the amount and the said revised pay-scale of Rs.7880-11660/- was granted

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to the petitioner in the year 1996, therefore, at this stage, no recovery can be effected from the petitioner.

9. In view of the above, this Court is of the considered opinion that the respondent – State has not been able to make out a case that the alleged wrong fixation of pay was a result of any misrepresentation/deception or concealment by the petitioner and any order passed at the back of the petitioner, without granting an opportunity of hearing, affecting his civil rights, cannot be sustained and thus, the case of the present petitioner is squarely covered by the judgment of Hon'ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (supra)***. Further, the recovery has been ordered by the respondent – State in violation of the principle of natural justice.

10. So far as the contention of learned counsel for the respondent – State with regard to the undertaking from the petitioner is concerned, the said undertaking is dated 02.03.2017 and the same is a general undertaking and not specifically taken at the time of grant of pay-scale of Rs.7880-11660/- and the same cannot be made basis for recovering the said amount.

11. Vide order dated 13.12.2017, recovery in pursuance to the impugned order dated 28.11.2017 (Annexure P-14) has already been stayed by this Court, however, the said amount has been withheld from the retiral benefits of the petitioner.

12. Consequently, the present petition is allowed and the impugned order dated 28.11.2017 (Annexure P-14), is set-aside. The

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respondents are directed to release the said amount along with 6% interest from the date it was due till its payment, within a period of 03 months from the date of receipt of certified copy of the judgment.

(NAMIT KUMAR)
JUDGE

16.04.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No