



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-4067-2018 (O&M)
Date of Decision :10.12.2024

Balwant Rai

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Marinal Sharma, Advocate for
Mr. P.S. Khurana, Advocate for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

In the present petition, grievance being raised by the petitioner is that the respondents have deducted a sum of Rs.64,120/- from the retiral benefits of the petitioner, which action on the part of respondents is arbitrary and illegal as no recovery could have been done from the petitioner after his retirement by withdrawing the increment granted to the petitioner.

Learned counsel for the respondents submits that any amount paid to the petitioner upto 22nd September, 2006 will not be recovered but thereafter, recovery can be done.

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

It may be noticed that the petitioner already stood retired from service on 31.10.2007 and his pensionary benefits were also fixed but later on, the respondents realized that benefit of one increment in favour of the petitioner had wrongly been extended to him and after the withdrawal of the



said benefit of increment, the recovery was sought to be done.

As per 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**, no recovery can be made from a retired employee, especially, who is working on Class-III or Class-IV post. The relevant paragraph 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.”

In the present case, the respondents had themselves granted the benefit of increment to the petitioner, which benefit was withdrawn after his retirement hence, no recovery can be done as the petitioner had already retired by the said date.

Even otherwise, 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. 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.



Keeping in view the above, the recovery sought to be done from the petitioner after his retirement from his retiral benefit is contrary to the settled principle of law hence, any recovery already done or intended to be done from the petitioner, is set aside. Any amount recovered from the petitioner be refunded to him within a period of 08 weeks from the date of receipt of copy of this order.

Present petition stands allowed in above terms.

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

December 10, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No