



CWP-6823-2018

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

207

CWP-6823-2018 (O&M)

Date of decision : 18.12.2024

KARNAIL SINGH

..... Petitioner

VERSUS

STATE OF PUNJAB & ORS

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. J. S. Jaidka, Advocate and
Mr. Abhishek Khullar, Advocate
for the petitioner.

Mr. Satnam Preet Singh Chauhan, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

1. By the impugned order, the recovery of Rs.82,630/- was done from the salary of the petitioner for the months of March and April 2017 respectively and thereafter, vide order dated 23.06.2017 (Annexure P-3), further recovery of Rs. 98,653/- has been done from the pensionary benefits of the petitioner.

2. Learned counsel for the petitioner submits that the salary has been refixed without giving any show cause notice by withdrawing certain benefits, which were given to the petitioner in the year 1988. Learned counsel further submits that as per the settled principle of law, even if, a benefit is to be withdrawn, the recovery of the excess amount can not be done, whereas in the present case, the same has been done from the

petitioner which is arbitrary and illegal and contrary to the judgment of Hon'ble the Supreme Court of India in **Civil Appeal No.11527 of 2014 titled State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.**

3. Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that in the year 2016, it had come to the knowledge of the department that the petitioner has wrongly been given certain benefits for the period 21.12.1988 upto 01.12.2003 and the said benefits were to be withdrawn and according to the calculation, a sum of Rs. 1,82,17/- was found to be recovered from the petitioner being excessed amount paid beyond the entitlement of the petitioner and as the petitioner had given an undertaking, the claim of the petitioner is treated to be covered under the judgment of co-ordinate Bench of this Court in **Civil Appeal No. 3500 of 2006 titled as High Court of Punjab & Haryana and others Vs. Jagdev Singh, decided on 29.07.2016,** and not in **Rafiq Masih (supra).**

4. Learned counsel for the petitioner submits that the benefits were granted starting from the year 1988 till 2003 and at that time, no undertaking was given and the undertaking which was given by the petitioner was only at the time of retirement whereas, the recovery had already been started by the respondent prior to the retirement of the petitioner and therefore, the undertaking being relied upon the respondents, does not relate to the benefit which was sought to be withdrawn and was only given in case of incorrect fixation of the pensionary benefits and hence cannot be applied in the facts and circumstances of the present case.

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

6. The law on the recovery of the excess amount paid to an employee is settled. As per the judgment of Hon'ble the Supreme Court of India in **Rafiq Masih (supra)**, in case excess amount has been paid, the same cannot be recovered from a Class-III or a Class-IV employee or where, employee has retired. As per the Hon'ble Supreme Court of India even where a benefit was paid to an employee for a period of 05 years, before the same was withdrawn, the recovery cannot be done.

7. The relevant paragraph of the judgment of Hon'ble the Supreme Court of India in **Rafiq Masih** (supra) 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."

8. Learned counsel for the respondents is not able to rebut that the recovery was done in the year 2017 whereas, the benefit was paid starting from the year 1988 till 2003, which is more than five years. Hence, the petitioner had availed the said benefit for a period of more than 05 years. Further, recovery has been done after the retirement, and that too from the pensionary benefits which is otherwise also not permissible. Learned counsel for the respondent has not been able to rebut even the said fact that keeping in view the judgment in **Rafiq Masih** (supra), the recovery could not have been done.

9. The only argument being raised by the learned counsel for the respondents is that as there is an undertaking which was given by the petitioner, the recovery could have been done. The reliance is being placed upon the undertaking Annexure R-9. It may be noticed that the said undertaking was given at the time of the retirement of the petitioner in April 2017 and that too, when the recovery of Rs.82,630/- had already been done from the Salary for the month of March and April 2017 i.e. prior to the said undertaking.

10. Further, the said undertaking cannot be brought into operation as the undertaking given at the time of receiving the benefit and not the undertaking given at the time of retirement qua fixation of the pensionary

benefit, so as to bring into operation the judgment of **Jagdev Singh (supra)**.

11. In the present case, the undertaking (Annexure R-9) cannot be made operational against the petitioner so as to recover the excess amount paid to the petitioner while in service.

12. Further, as learned counsel submits that as per the undertaking, it was mentioned that any amount paid to the petitioner erroneously or in excess of his entitlement can be recovered, it may be noticed that the petitioner had already retired and the respondents were not releasing his pensionary benefits and any undertaking taken from the employee which is contrary to the settled principle of law will not bind the employee qua his right to retain the excess amount paid.

13. The Hon'ble Supreme Court of India in **Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022**, has held that where an employee was not at fault with regard to the extension of benefit and there is no representation on behalf of the employee concerned to get the emoluments beyond his/her entitlement, the recovery cannot be made. The 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.”

14. Learned counsel for the respondents has not been able to point out any incorrect statement on the part of the petitioner, which led to grant of the benefit which was withdrawn by the respondents.

15. Keeping in view the said facts, the recovery of the excess amount done by the respondents by the impugned order is set aside. Consequently, the present petition is allowed and the respondents are directed to refund the said amount, within a period of 08 weeks from the date of receipt of certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

18.12.2024
Rimpal

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