



CWP-694-2018

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

220

**CWP-694-2018(O&M)
Date of decision : 09.12.2024**

LAKHWINDER SINGH

..... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that after the retirement, the salary of the petitioner has been refixed with retrospective effect so as to not only revise the pension but also to effect recovery of the alleged excess amount i.e. Rs.1,41,070/- from the retiral benefits of the petitioner, which cannot be done after the retirement as, once there is no master and servant relationship, the salary admissible to the petitioner as on the last working day, could not have been reduced to the disadvantage of the employee so as to effect recovery.

2. Learned counsel for the petitioner very fairly submits that at the time of issuing notice of motion, the petitioner has not wished to press the prayer with regard to re-fixation of his pay and only challenge remains is



CWP-694-2018

:2:

with regard to the recovery done from the petitioner.

3. Upon notice of motion, the respondents have filed reply wherein it has been stated that once, after the retirement it came to the knowledge of the Department that the salary of the petitioner was not fixed in accordance with law, the same was refixed and as the petitioner was not entitled to retain the excess amount paid to him, the recovery was ordered, hence, the writ petition may kindly be dismissed.

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

5. The issue as to whether any recovery can be done from an employee after his/her retirement is well settled by 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**, wherein it has been held that no recovery can be done from a retired employee. Further as per **Rafiq Masih** (supra), no recovery can be done from a Class-III or a Class-IV employee or where the benefit sought to be withdrawn was paid to the employee continuously for a period of 05 years. In the present case, not only the petitioner had already retired but, the benefit sought to be withdrawn, was given to the petitioner in the year 2009, whereas, the same was sought to be withdrawn in the year 2018 i.e. after a period of 09 years, which is contrary to the settled principle of law.

6. The relevant paragraph of the judgment Hon'ble the Supreme Court of India in **Rafiq Masih** (supra) is as under:-

“12. It is not possible to postulate all situations of



CWP-694-2018

:3:

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.”

7. Keeping in view the above, as the petitioner had already retired from service on the date when impugned order was passed and there was no master and servant relationship, the respondents, could not have done recovery especially keeping in view the judgment of Hon'ble the Supreme Court of India in **Rafiq Masih** (supra).



CWP-694-2018

:4:

8. Learned counsel for the respondents has not been able to rebut the claim of the petitioner that no recovery can be done as the issue is covered by the judgment of *Rafiq Masih* (supra).
9. Keeping in view the above, the order effecting the recovery from the pensionary benefits of the petitioner is set aside. Any amount recovered from the petitioner be refunded back to him within a period of 03 weeks from the receipt of certified copy of this order.
10. Present petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

09.12.2024
Rimpal

Whether speaking/reasoned	Yes
Whether Reportable :	No