

2024:PHHC:165913



**106+266 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-2441-CWP-2024 in/and
CWP No.25093 of 2022
Date of Decision : 12-12-2024**

SANDEEP KUMAR AND ANOTHER

.....Petitioner(s)

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Nitesh Singla, Advocate for the petitioners.

Mr. Satnampreet Singh Chauhan, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-2441-CWP-2024

This is an application for placing on record reply by way of affidavit of Ms. Padmani, District Education Officer (SE), Punjab on behalf of respondent Nos.1 to 6.

Keeping in view the contents mentioned in the application, the same is allowed. Reply on behalf of respondent Nos.1 to 6 is taken on record subject to all just exceptions.

CWP No.25093 of 2022

In the present petition, the challenge is to the orders of recovery from the salary of the petitioners on the ground that their salary was wrongly fixed w.e.f 01.12.2011.

Learned counsel for the petitioner submits that the impugned orders of recovery have been passed in the year 2022 i.e. after 11 years of the said fixation of their salary.

Learned counsel for the petitioners further submits that the law with regard the recovery of the excess amount paid has already been settled by 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*** as well as ***in Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022*** and the claim of the petitioners is squarely covered by the abovesaid judgements hence, no recovery can be done from the petitioners.

Upon notice of motion, the respondents have filed their reply. In the reply, the respondents have stated that once, the salary of the petitioners was not in accordance with their entitlement and the petitioners have drawn more salary, the excess payment is liable to be recovered as the same is a State Exchequer.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

The issue with regard to the recovery from a retired employee has already been settled by 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***, according to which, no recovery can be done from a class III and class IV employee and that too after the retirement. Further, as per the judgment in ***Rafiq Masih's case (supra)***, no recovery can be done after withdrawing a benefit which an employee continued to get for a period of five years before

the same was withdrawn. 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 pay of the petitioners was wrongly fixed by the respondents in the year 2011 and the recovery is sought to be done after a period of 11 years in the year 2022 hence, the claim of the petitioners is covered under Clause II and III of the judgement of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***.

Learned counsel for the respondents have not been able to rebut the claim of the petitioners with regard to the challenge to the recovery orders keeping in view the judgement of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***.

Apart from this, as per the judgment of 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***, where there is no misrepresentation on behalf of an employee so as to receive emoluments beyond his/her entitlement, the recovery cannot be done from employee concerned. 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.”

Keeping in view the above, as there was no misrepresentation on the part of the petitioners and the pay of the petitioners was fixed by the respondents themselves, no recovery of the excess amount paid can be done from the petitioners keeping in view the judgement of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***. Hence, the orders recovering the excess amount paid is set aside. Any recovery done from the petitioners during the pendency of the present petition be refunded back to the petitioners within a period of 8 weeks from the receipt of copy of this order.

The present petition is allowed in the above terms.

Pending application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

12-12-2024
Sapna Goyal

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO