

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-26880-2022
Decided on : 01.05.2024

Kuldeep SinghPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Ms. Amandeep Kaur, Advocate for
Ms. Sonia G. Singh Samber, Advocate
for the petitioner.

Ms. Akshita Chauhan, D.A.G., Punjab
for respondents No.1 and 2.

Mr. Dushant Jog, Advocate for
Mr. T.V.S. Lehal, Advocate
for respondent No.3.

NAMIT KUMAR, J. (Oral)

1. Short reply on behalf of respondent No.3 has been filed in the Court which is taken on record.
2. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India seeking a writ of certiorari for quashing the order dated 10.08.2022 (Annexure P-3), whereby an amount of Rs.1,05,006/- has been ordered to be recovered from the petitioner on account of excess payment made to him during the period from December, 2011 to June, 2021.
3. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner joined the service of the respondent-department in the year 2001 as Truck Driver on contract basis and his

services were regularized vide order dated 18.11.2011. The petitioner retired on 30.04.2022, on attaining the age of superannuation and after his retirement the impugned order for recovery of Rs.1,05,006/- has been passed on 10.08.2022. Hence this petition.

4. While issuing notice of motion on 23.11.2022, the recovery was stayed.

5. In the reply filed by contesting respondent No.3, it has been averred as under :-

“xxxx xxxx xxxx xxxx

4. *That as per the 6th Punjab Pay Commission the salary of the present petitioner got revised and during the same it was also came in the knowledge that on 01.12.2011, the government had revised the salary of the drivers and government had also given special increment to the drivers.*

5. *That when on 01.12.2011 the salary of the drivers got revised, the special increment was given two times, that first time it was given prior to the revised scale whereas the second time, after the revised scale, whereas the same i.e. special increment has to be given only once prior to the revised salary and by this way from December, 2011 to June, 2021 excess amount of Rs. 105006/- has been given to the present petitioner and the same is liable to be recovered from the petitioner. That the copy of the recovery sheet is herewith annexed as **Annexure R-3/1**.*

6. *That the petitioner had given undertaking dated 23.11.2021, that any excess payment made to the petitioner shall be refunded to the department either by adjusting against the future payments due to him or otherwise. That*

the copy of the said undertaking is herewith annexed as Annexure R-3/2.

7. That the answering respondent had made excess payment of Rs.105006/- to the petitioner and the same is liable to be recovered from him.

xxxx xxxx xxxx xxxx”

6. Learned counsel for the petitioner submits that the petitioner has already been retired from service on 30.04.2022 and after his retirement, an amount of Rs.1,05,006/-, being alleged excess payment made to him, has been ordered to be recovered from him vide impugned order dated 10.08.2022. He submits that the impugned recovery order has been passed without issuance of any show cause notice or personal hearing in unilateral manner, which is not only in violation of the principles of natural justice but also against the law laid down in judgment of the Hon’ble Supreme Court passed in ***State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195.***

7. On the other hand, learned counsel for contesting respondent No.3, while referring to the averments made in the reply, submits that there is no illegality or infirmity in the impugned order dated 10.08.2022 as the excess payment was made to the petitioner from December, 2011 to June, 2021 and the same is liable to be recovered from the petitioner. He further submits that the petitioner had also given undertaking dated 23.11.2021 that any excess payment made to him shall be refunded by him either by adjusting against the future payments due to him or otherwise.

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8. I have heard learned counsel for the parties and perused the relevant documents.

9. The stand taken by respondent No.3 is that on 01.12.2011 when the salaries of the drivers got revised, the special increment was given two times, first time it was given prior to the revised scale whereas the second time, after the revised scale, however, the special increment was to be given only once prior to the revised salary and by this way from December, 2011 to June, 2021 excess amount of Rs.1,05,006/- has been given to the present petitioner which is liable to be recovered.

10. The argument raised by learned counsel for the respondents is not sustainable as even if an excess amount on the basis of wrong fixation of pay was paid to the petitioner, the same cannot be recovered from him after his retirement. The action of the respondent-Department is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (Supra)***. The relevant portion of the aforesaid judgment is reproduced 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.”

11. The facts and circumstances of the present case suggests that it is not the case of the respondent-Department that it was due to some fraud or misrepresentation of the petitioner, who was working against Class III post, that he was granted special increment twice but it was granted by the respondent-Department on their own.

12. Moreover, a perusal of the undertaking (Annexure R-3/2) would show that the same is dated 23.11.2021, whereas the recovery, for the excess salary paid, is being made for the period from December, 2011 to June, 2021, therefore, the said undertaking has no concern with the recovery amount which is proposed to be recovered from the

petitioner. Further the said undertaking is of general in nature which is taken from each and every employee while revising their pay scales.

13. Moreover, the recovery has been ordered by the respondent-Department in violation of the principle of natural justice as neither any show cause notice was issued to the petitioner nor he was granted an opportunity of personal hearing.

14. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by Clauses (i), (ii) and (iii) of the judgment of Hon’ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***.

15. Consequently, the present petition is allowed and the impugned order dated 10.08.2022 (Annexure P-3) is set aside.

01.05.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No