



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

Date of Decision : 13-11-2024

.....Respondent(s)

Present: Mr. Sunny Singla, Advocate with
Ms. Riti Aggarwal, Advocate for the petitioner.

Ms. Shruti, AAG Punjab.

Despite taking two adjournments, no reply has been filed by learned counsel for the respondent-State.

The present case relates to the recovery done from the retiral benefits of the petitioner after his retirement hence, no further opportunity is required to be given for filing reply as, the challenge to the order dated 04.10.2023 imposing recovery is based upon the judgement 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.***, as well as on the ground that no notice was given to the petitioner before ordering recovery from the retiral benefits of the petitioner.

Learned counsel for the petitioner submits that the petitioner retired on attaining the age of superannuation on 31.10.2022 and after his

retirement, the impugned order of recovery has been passed on 04.10.2023, wherein a sum of Rs.70,588/- has been recovered from the payment of the Leave Encashment, which is causing prejudice to the petitioner hence, the same is liable to be set aside.

Learned counsel for the respondents argues that once, the petitioner was paid more than his entitlement, the recovery has rightly been done from the payment of the Leave Encashment.

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

The question of law 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 3 and class 4 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be done after withdrawing a benefit which an employee continue to get for a period of five years before the same was withdrawn.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.”*

From the perusal of the above reproduction, it is clear that no recovery can be done from a Class-III or Class-IV employee and in the present case, no recovery can be done from the petitioner after his retirement hence, the recovery of the amount of Rs.70,588/- that has been done after the retirement of the petitioner which is clear from the impugned order itself, is contrary to the settled principle of law and cannot be allowed.

Even otherwise, a bare perusal of the impugned order dated 04.10.2023 (Annexure P-1) would show that before affecting recovery from the pensionary benefits of the petitioner, no notice of the said recovery was given so as to allow the petitioner to raise objections qua the said proposed recovery.

In the absence of any opportunity given to the petitioner, the recovery has been done by violating the principles of natural justice which itself is a ground to set aside the order of recovery.

Further, in the impugned order dated 04.10.2023 (Annexure P-1) nothing has been mentioned that the excess amount was taken by the petitioner by misleading. Once, the respondents have not attributed any misappropriation on the part of the petitioner so as to claim the excess amount, no recovery could have been done from the retiral benefits of the petitioner.

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 misrepresentation on behalf of the employee concerned to get the 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, the recovery of Rs.70,588/- which has been done from the Leave Encashment of the petitioner is contrary to the settled principle of law and the same cannot be sustained and the said order of recovery of the excess amount is accordingly set aside.

The respondents are directed to release the said amount recovered in favour of the petitioner within a period of 8 weeks from the receipt of copy of this order.

The present writ petition is allowed in above terms.

Pending application, if any, also stands disposed of.

13-11-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

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