



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(239)

CWP No. 11071 of 2018 (O&M)

Date of Decision : 21.04.2025

Sh. Raghbir Chand Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Karan Singla, Advocate for the petitioner.

Ms. Akshita Chauhan, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the order dated 18.06.2024 by which, recovery of certain amount has been imposed upon the petitioner and that too after his retirement from his service.

2. Learned counsel for the petitioner submits that the said recovery order dated 18.06.2024 passed by the authority concerned is contrary to the settled principle of law 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***, decided on 18.12.2014 and, therefore, the said order cannot be sustained.

3. Learned counsel appearing on behalf of the respondents submits that keeping in view the averments made in the written statement, the petitioner was paid amount more than he was entitled to, which excess amount has been sought to be recovered from him and as the petitioner



retired on a Class-II post while working on the post of Sub Divisional Engineer, the petitioner could not have been allowed to retain the said amount.

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

5. It is a conceded fact that the order for recovering the excess amount paid to the petitioner was passed after the retirement of the petitioner from his service. Further, no show cause notice qua the recovery of excess amount paid was given to the petitioner before holding him liable for the refund of the excess amount paid to him.

6. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, no recovery can be made from an employee who has been retired or where an employee continues to get an excess payment for a period of more than five years before the same is withdrawn by way of recovery. 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.”

7. Learned counsel for the respondents has not been able to rebut that the claim of the petitioner qua recovery order issued by the respondents will be covered under the two set of situations stipulated by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, in which situation recovery cannot be made from an employee.

8. Apart from this, 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 is not at fault with regard to the extension of benefit that he has received and there is no mis-representation or fraud on behalf of the employee concerned in order to get the emoluments beyond his/her entitlement, the recovery of such excess amount paid to that employee 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.”

9. Keeping in view the above, no recovery of excess amount could have been made from the petitioner. Any recovery, if made from the petitioner, be refunded back to him within a period of eight weeks from the date of receipt of copy of this order.

10. Petition is allowed in above terms.

11. Pending miscellaneous application, if any, also stands disposed of.

April 21, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No