IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(205) **CWP No. 19026 of 2023 (O&M)**
Date of Decision : 29.01.2025

Asha Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vaishali, Advocate for
Mr. Ashok Bhardwaj, Advocate for the petitioner.

Ms. Akshita Chauhan, Deputy Advocate General, Punjab.

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Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the order dated 02.08.2023 (Annexure P-13) by which the recovery of an amount of ₹1,26,658/- along with interest has been ordered to be done from the petitioner, on the ground that same 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.***

2. Learned counsel for the petitioner submits that the petitioner attained the age of superannuation on 31.05.2015 after which she was granted extension in service and the petitioner remained working with the respondent-department upto 31.05.2017 on which date, the petitioner retired from service and thereafter, the pensionary benefits were fixed and the petitioner was granted pension.

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3. Learned counsel for the petitioner submits that thereafter, a show cause notice dated 06.05.2019 (Annexure P-1) was given to the petitioner stating that her pension has wrongly been fixed by granting her two increments even during the period of extension in service which could not have been granted hence, the salary of the petitioner needs to be re-fixed and consequent pension as well and the excess amount paid to the tune of ₹1,26,658/- are to be recovered. The petitioner submitted her reply to the said show cause notice and ultimately, the respondents have passed the impugned order dated 02.08.2023 by which the respondents have directed the recovery of a sum of ₹1,26,658/-, which was excessively paid to the petitioner.

3. Learned counsel for the petitioner argues that once, there was no misrepresentation on the part of the petitioner in fixing her pay and consequent pension, no recovery could have been done, especially after the retirement of an employee hence, the impugned order dated 02.08.2023 (Annexure P-13) is liable to be set-aside.

4. Learned counsel for the respondent-State submits that once an excess amount was paid to the petitioner, which was beyond her entitlement, the same being public money, the recovery sought to be done is perfectly valid and legal.

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

6. The question of law as to whether any recovery can be done from an employee after his/her retirement has already been settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, wherein it

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has been held that no recovery can be done from a retired employee. 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 dispute that on the date when the recovery was sought to be done, the petitioner had already retired from service. That being so, the recovery of excess amount paid to the petitioner cannot be done. Even otherwise, there was no role of

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the petitioner in fixing her last drawn wages or grant of increment or fixation of pension and the same was done by the respondents themselves.

8. Further, 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 a financial 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. 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."*

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9. Learned counsel for the respondents has not been able to dispute the said settled principle of law.

10. Keeping in view the facts and circumstances of the present case as well as the settled principle of law noticed here-in-before, the recovery being done from the petitioner after her retirement is not permissible and the impugned order dated 02.08.2023 (Annexure P-13) is accordingly set-aside.

11. Any recovery done from the petitioner be refunded back to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

12. Present petition is allowed in above terms.

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

January 29, 2025 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No

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