2025:PHHC:078424

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22722-2024
Date of Decision: 03.07.2025

K.D. Dewan ......Petitioner(s)

Versus

State of Haryana and others ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. P.K. Chugh, Advocate, for the petitioner.

Mr. Raman Sharma, Addl. A.G., Haryana.

Mr. Padamkant Dwivedi, Advocate,
and Ms. Mansi, Advocate, for respondent Nos.2 and 3.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of communication dated 23.04.2024 (Annexure P-5) whereby he has been directed to deposit excess amount of pension.

2. The petitioner was working with Haryana Vidyut Prasaran Nigam Ltd. and retired on attaining the age of superannuation on 31.07.1995 as Under Secretary. He was eligible for enhancement of pension on attaining the age of 80 years and further enhancement on attaining the age of 85 years. The respondent by mistake enhanced his pension prior to his eligibility. The enhancement took place in 2011 whereas he was eligible from 2017. The respondent realized its mistake in 2022 when petitioner claimed further enhancement. The respondent

initiated recovery proceedings and recovered a sum of Rs.26,000/- from 2 months' pension of the petitioner.

3. Mr. P.K. Chugh, learned counsel for the petitioner submits that grievance of the petitioner would be redressed if further recovery is set aside and respondents are directed to fix his actual pension.

4. Mr. Padamkant Dwivedi, learned counsel for respondent Nos.2 and 3 submits that due to typographical error, the pension of petitioner was enhanced in 2011 whereas it should have been 2017. The mistake occurred on account of misreading of date of birth of the petitioner. The petitioner had furnished undertaking, thus, respondent was in its authority to recover alleged excess amount.

5. The Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334*** has held that recovery from Group-C and Group-D employees should not be effected with respect to excess payment. The Court has further held that no recovery should be effected from retired employees or who are due to retire within one year from the order of recovery. The Court has further held that where it is found that recovery would be harsh or arbitrary, it may be set aside. The relevant extracts of the judgment read as:-

> *"18. 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 hereinabove, we may, as a ready reference, summarise the following few*

situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

6. The petitioner is claiming that he is getting pension and is an 88 years old man, thus, as per judgment in **Rafiq Masih (supra)** no recovery can be effected from him. This Court finds that case of petitioner is covered by judgment of Supreme Court in **Rafiq Masih (supra).** Thus, respondent cannot effect recovery from pension. It is made clear that the respondent shall not effect recovery with respect

to past payment, however, would be at liberty to fix correct pension for the subsequent months/years.

7. Disposed of.

03.07.2025 (JAGMOHAN BANSAL)
shivani JUDGE

Whether reasoned/speaking Yes
Whether reportable Yes