

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-26055-2015 (O&M)

Date of decision: - 31.01.2019

Sukhdev Singh

....Petitioner

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. H.K. Brinda, Advocate,
for the petitioner.

Mr. Roshan Lal Sharma, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present case, the challenge is to the order dated 06.05.2015 (Annexure P-1) by which a sum of ₹89,616/- has been recovered from the gratuity of the petitioner upon re-fixation of his pay.

As per the facts mentioned, the petitioner was appointed as a Lower Division Clerk on 23.06.1976 and thereafter, he was promoted as Upper Division Clerk. While working as a UDC, the petitioner retired on 28.02.2015.

Counsel for the petitioner states that while making the payment of the retiral benefits, a sum of ₹89,616/- has been recovered from the gratuity of the petitioner, which is clear from order dated 06.05.2015 (Annexure P-1).

Notice of motion was issued on 14.12.2015 and the respondents have filed their reply.

In the reply, the respondents have stated that after the retirement of the petitioner on 28.02.2015, some objections were raised by the accounts branch regarding the fixation of salary of the petitioner. The said objections were removed and the salary of the petitioner was refixed w.e.f. 25.08.2004 and the resultant recovery of the excess amount paid to the petitioner, was ordered. The relevant paragraph of the reply is as under: -

“That the petitioner has no cause of action to file the present writ petition against the respondent. The fact are that the petitioner retired from service w.e.f. 28.02.2015 after attaining Corporation raised some objection regarding pay fixation of the petitioner on the inspection of service book of the petitioner. To remove the objection of account branch the pay of the petitioner was refixed from 25.08.2004 till the date of his retirement and recovery of Rs.89616/- was calculated and intimated to the account branch which the account branch has deducted from the amount of gratuity of the petitioner. The recovery has been made from the gratuity of the petitioner due to wrong fixation of his pay and the petitioner has no right to challenge the same.”

Counsel for the petitioner in rebuttal states that without giving any opportunity of hearing or issuing any show cause notice, the respondents refixed the salary of the petitioner unilaterally and ordered the resultant recovery.

Counsel for the petitioner further states that not only the order is bad due to violation of Rules of natural justice, but even the

recovery could not have been ordered from the petitioner in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, as the petitioner had already retired from service, when the refixation of his salary was done and recovery ordered.

Counsel for the petitioner further states that at this stage, the petitioner confines his prayer only in respect of the recovery and does not press the challenge to the order of refixation.

I have heard counsel for the parties and have gone through the record.

From the perusal of the record, it is clear that the respondents unilaterally refixed the salary of the petitioner in order to remove an objection raised by the Accounts Department of the Corporation. It is admitted that no hearing whatsoever was given to the petitioner before the said refixing. Further, the reply is totally silent as to whether the petitioner was in any way involved in the grant of benefits, which have been withdrawn by the respondents while refixing the salary of the petitioner. Further, it has not been denied by the respondents that the refixation was done after the retirement of the petitioner.

As the judgment in **Rafiq Masih's case (supra)**, it is clear that no recovery can be ordered from an employee after retirement.

Relevant paragraph of the 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 above, it is made clear that case of the petitioner is squarely covered under Clause 12(ii) of the said judgment. In the absence of malafide or any misrepresentation, the petitioner is entitled for the benefit of Clause 12(ii) of the judgment. Further, in the present case, not only the pay was refixed unilaterally after the retirement, but the recovery has already been ordered after the retirement, which is impermissible as per the principle of law settled by the Hon'ble Apex Court in **Rafiq Masih's case (supra)**.

In view of the above, the action of the respondents in recovering the amount of ₹89,616/- from the gratuity of the petitioner is held to be bad. Hence, the present writ petition is allowed to the extent that the respondents shall refund the recovered amount to the petitioner

within a period of two months from the date of receipt of certified copy of this order. Further, as the recovery was done contrary to the settled principle of law and that too without giving any show-cause notice, the petitioner shall also be entitled for interest on the said amount @ 9% per annum till the refund of the amount.

January 31, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes