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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-12545-2024

Date of decision : 27.05.2024

Gurcharan Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amrik Singh, Advocate
for the petitioner.

Mr.T.P.S. Walia, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 03.08.2022 (Annexure P-8) vide which an amount of Rs.2,93,226/- has been shown to be recoverable, remarks given in the EPPO (Annexure P-9) to effect the recovery and the letter dated 06.05.2024 (Annexure P-10) vide which it has been written by respondent no.5 to respondent no.6 to effect the recovery from the pension of the petitioner on account of re-fixation of pay, in view of the instructions dated 01.11.2021 (Annexure P-7) and 28.08.2015 (Annexure P-12) and also being in violation of the law laid down by the Hon'ble Supreme Court of India in the case of ***State of Punjab and others vs. Rafiq Masih (White Washers) and others***



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reported as **2015(4) SCC 334**.

2. Learned counsel for the petitioner has submitted that the petitioner is not challenging re-fixation of his pay and has limited his prayer to the effect that no recovery should be effected from him as the petitioner had retired on 31.03.2021. In this regard, reliance has been placed upon a judgment of the Hon'ble Supreme Court in **Rafiq Masih (White Washer)'s** case (supra), para 12 of which judgment has been highlighted and the relevant portion of the same is reproduced herein below: -

“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.*

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated



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hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

3. Learned counsel for the petitioner has submitted that a perusal of above-said para would show that the Hon'ble Supreme Court had summarized certain situations wherein the recoveries by the employers would be impermissible in law, where the payments had been made mistakenly by the employer, in excess of entitlement to the employee and one such situation, as provided under Clause (ii) of Para 12, was recovery from retired employees or employees who are due to retire within one year, of the order of recovery. It is stated that the case of the present petitioner is squarely covered under the said clause (ii) as it is not in dispute that the petitioner has retired on 31.03.2021 and there is no allegation of any misrepresentation or fraud on his part.

4. Learned State counsel has not able to dispute the law laid down in the above-said judgment and has no objection to the said limited prayer made by learned counsel for the petitioner.

5. Keeping in view the above-said facts and circumstances, the present writ petition is allowed to the extent that no recovery in pursuance of the impugned action of the respondent authorities would be effected from the present petitioner.

(VIKAS BAHL)
JUDGE

May 27, 2024
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No