(2019) 09 P&H CK 0249

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 23581 Of 2016 (O&M)

Gian Chand — APPELLANT

Vs

State Of Punjab And Others — RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Citation : (2019) 09 P&H CK 0249

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Parveen Kumar Garg, H.S. Sitta, Sanyam Khetarpal, Kulwinder Singh

Final Decision : Dismissed

Judgement

Harsimran Singh Sethi, J

In the present writ petition, the grievance of the petitioner is that vide impugned letter dated 06.02.2014 (Annexure P-5), an amount of Rs.23,321/- has been ordered to be recovered from the petitioner on account of excess amount paid to the petitioner from August 2009 till December 2012.

Learned counsel for the petitioner argues that keeping in view the law laid down by the Hon'ble Supreme Court of India in the case of State of Punjab Vs. Rafiq Masih, 2015(1) SCT 195, no recovery of excess amount paid can be done from a retired employee and as the petitioner has already retired from service on 30.04.1996, the recovery which has been done by the impugned letter dated 06.02.2014, is contrary to the settled principle of law.

Counsel for the respondents, on the other hand, states that the pension of the petitioner was wrongly fixed in August 2009 and he was wrongly paid an excess amount to the tune of Rs.23,321/- upto December 2012 and the petitioner had already given an undertaking that in case any excess amount is found to be paid to the petitioner, the respondents are free to recover the same. The reply on behalf of the respondents is as under:-

"That the petitioner retired as Inspector from the office of Municipal Council, Sangrur on dated 30.4.1996 and on the date of retirement, he was getting basic salary of Rs.6800/- and his pension was fixed Rs.3015/- by taking his qualifying service i.e. 32 years 1 month and 16 days. He remained in service for 34 years 4 months and 4 days and a period of 2 years 2 months and

18 days was deducted from qualifying service as non-qualifying service, but subsequently his pension was revised from Rs.3015/ to Rs.3109/- by taking maximum 33 years as qualifying service under rules and arrear was paid to him.

That the petitioner has also prayed that the recovery to the tune of Rs.23321/- may not be affected from him. In this context, it is submitted that his pension was revised w.e.f. August 2009 as per recommendations of fifth pay commission and inadvertently grant of interim relief was wrongly added to his basic pension, whereas, there was no instructions as such. Therefore, his pension was again fixed as RS.7028/- w.e.f. 1.1.2013. Thus, as the petitioner has drawn the excess pension after taking the benefit of interim relief. Therefore, it was ordered that a recovery of Rs.23,321/- be made from him. It is worthwhile to mention here that he has given the certificate while submitting the pension form to the extent that if any excess amount paid to him, he is bound to repay the same and out of Rs.23,321/-, an amount of Rs.4187/- has been recovered and balance of RS.19134.00 is outstanding against him."

There is no replication to the written statement filed on behalf of the respondents.

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

In the case of Rafiq Masih (supra), Hon'ble Supreme Court of India has held that no recovery can be effected from a retired employee but the said judgment came for consideration before the Hon'ble Supreme Court in the case of High Court of Punjab & Haryana and others Vs. Jagdev Singh, 2016(14) SCC 267, wherein Hon'ble Supreme Court of India has drawn a distinction where, the judgment in Rafiq Masih's case (supra) will not be applicable. Hon'ble Supreme Court of India while deciding the case of Jagdev Singh (supra), has held that where an employee has furnished an undertaking at the time of receiving a particular benefit that in case it is found that any excess amount has been paid, the employee will refund the same, judgment in Rafiq Masih's case (supra) will not be applicable. The relevant paragraphs of the judgment of the Hon'ble Supreme Court in the case of Jagdev Singh are as under:-

"9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the

Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc. 2015(1) S.C.T. 195, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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."

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

Counsel for the petitioner is unable to dispute that in the present case, the petitioner has given an undertaking to the effect that in case it is found that any excess payment is made to him, he will refund the same. Keeping in view the above, the case of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court of India in Jagdev Singh's case (supra) and therefore, no fault can be found in the recovery of the amount by the respondents by the impugned order.

Hence, the writ petition is dismissed with no order as to costs.