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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(244)

CWP-3642-2021

Date of Decision : January 29, 2025

Bachan Singh**.. Petitioner****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Rahul Garg, Advocate, for
Mr. Naveen Batra, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that after five years of his retirement, a recovery of Rs.69,631/- has been ordered to be done from the retiral benefits of the petitioner hence, the said recovery, which 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*, may kindly be set aside.

2. Upon notice of motion, the respondents have conceded the fact that the petitioner retired from service on 31.12.2007 and the order dated 19.01.2012 (Annexure P-1) of recovery was passed five years after the retirement but submits that as the said order is being challenged in the year 2021, the writ petition may kindly be dismissed.

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



4. The issue that was raised in the present petition was whether, a retired employee can be made to refund the excess amount paid by the employer. The petitioner retired from service on 31.12.2007 but recoveries were done after a period of five years of his retirement in the year 2012.

5. Qua the recovery from a retired employee, the issue has already been 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,*** according to which, 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



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outweigh the equitable balance of the employer's right to recover.”

6. Learned counsel for the respondents has not been able to rebut as to how the recovery could have been made from the petitioner, who had already retired as it is contrary to the settled principle of law noticed hereinbefore.

7. The only question raised by the respondents that the petitioner should have challenged the order dated 19.01.2012 (Annexure P-1) within a reasonable time.

8. It may be noticed that the petitioner had already retired from service in the year 2007 and he was working on class III post as Section Officer and recovery was done in the year 2012.

9. Keeping in view the fact that the petitioner is a retired employee and the recovery of excess amount is void and cannot be sustained being contrary to the settled principle of law, the argument that the writ petition should be dismissed on the ground of delay, cannot be accepted especially when the recovery has been done from the pensionary benefits and that too after five years of retirement.

10. Keeping in view the above, the order dated 19.01.2012 (Annexure P-1) is set aside. A sum of Rs.38,503/- which has been recovered 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.

11. The present writ petition is disposed of in above terms.

January 29, 2025

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No