

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

(1) CWP-14442-2011 (O&M)
Date of decision : 19.05.2015

Punjab State Power Corporation Ltd.

...Petitioner

Versus

Gauri Shankar and others

...Respondents

(2) CWP-16994-2011 (O&M)
Date of decision : 19.05.2015

Punjab State Power Corporation Ltd.

...Petitioner

Versus

Daljit Singh and others

...Respondents

(3) CWP-6491-2013 (O&M)
Date of decision : 19.05.2015

Punjab State Power Corporation Ltd.

...Petitioner

Versus

Harchand Singh and others

...Respondents

(4) CWP-18039-2013 (O&M)
Date of decision : 19.05.2015

Punjab State Power Corporation Ltd.

...Petitioner

Versus

Harnek Singh and others

...Respondents

(5) CWP-18043-2013 (O&M)
Date of decision : 19.05.2015

Punjab State Power Corporation Ltd.

...Petitioner

Versus

Vishwanath

...Respondents

(6) CWP-18044-2013 (O&M)
Date of decision : 19.05.2015

Punjab State Power Corporation Ltd.

...Petitioner

Versus

Barjinder Singh (through LRs) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Amit Mehta, Advocate,
for the petitioner-Corporation.

Mr. Saravpreet Gurna, Advocate,
for respondent No.1 in CWP-14442-2011.

Mr. Raman Sharma, Advocate, as amicus curiae,
for respondent No.1, in CWP-18043-18044-2013.

Mr. Anil Kumar Garg, Advocate,
for respondent No.1 in CWP-18039-2013.

Mr. H.S. Dhandi, Advocate,
for respondent No.1 in CWP-6491-2013.

JITENDRA CHAUHAN, J. (Oral)

The above noticed six writ petitions No.14442 of 2011; 16994 of 2011; 6491 of 2013; 18039 of 2013; 18043 of 2013 and 18044 of 2013, preferred by the petitioner-Corporation, are being disposed of by this single judgment, as the same law point is involved in all the writ petitions. However, for brevity, the facts are being derived from CWP No.14442 of 2011.

The petitioner has sought the quashing of the order dated 24.12.2008 (Annexure P-4), passed by respondent No.2, to the extent it directs that the payment, if made to the employee, be not recovered, as well as order dated 21.01.2009, passed by respondent No.3 (Annexure P-5).

In the present case, the employees of the Board had been receiving gratuity under the Payment of Gratuity Act, 1972 (for short, 'the Act of 1972'). However, in terms of Section 5 of the Act of 1972, the Board applied for exemption from payment of gratuity under the provisions of the Act of 1972, which was declined. Ultimately, vide notification dated 08.01.2004, the State Government exempted the Board and its employees from the operation of the provisions of the Act of 1972, w.e.f. 17.01.1972, the date on which the Act itself came into force. However, it was clarified that the payments already made under the Act of 1972, will not be recovered.

The order dated 08.01.2004 was challenged through a number of writ petitions before this High Court. The Board also filed

writ petition in which the orders of the Controlling Authority and the Appellate Authority under the Act of 1972, whereby, the Board had been ordered to make payment of gratuity under the Act of 1972, along with interest, instead of gratuity paid under the Civil Services Rules, were challenged. All these writ petitions, (main writ petition No.CWP No.5126 of 2004, titled as ***Balwant Singh and others Vs. State of Punjab and others***), were decided vide judgment dated 27.02.2008 (Annexure P-2), wherein, it was held as under:-

“The State Government has taken into account that the Act may not be prejudicial to the Board employees and, on that count, it has been clearly laid down in Annexure P-5 that the payment already made to the employees shall not be recovered. So, due protection has been given to the Board employees who have already received the amount.

The Controlling Authority under the Act of 1972 has ordered the payment of gratuity. In some cases, the said amounts have been deposited with the Controlling Authority but have not been paid to the Board Employees due to pendency of the present writ petitions. Since we have categorically held that the notification dated 8.1.2004, is legal, valid and in accordance with the provisions of Section 5 of the

Act of 1972, as such the amount, if any deposited by the Board shall be refunded to the Board....”

The precise grouse of the petitioner is that despite the specific direction of the Appellate Authority vide Annexure P-3, that the amount deposited by the appellant-Board at the time of instituting the appeal, be not released to any party till the disposal of the appeal, the amount stands paid to the employees by the Controlling Authority. It is argued that the protection given by this Court vide judgment dated 08.01.2004, that the payment already made to the employees shall not be recovered does not cover the case of respondent No.1, as the payment has been made in contravention of a specific direction given in Annexure P-3.

On the other hand, it is argued on behalf of respondent No.1 that the respondent retired from service of the Board on 30.04.1999 and as such, the payment of gratuity become due to him immediately thereafter. The amount in dispute was ordered to be released by the Controlling Authority vide order dated 11.11.2003, which has been deliberately withheld by the petitioner in the present writ petition.

Heard.

The question with regard to the legality/validity of the notification dated 08.01.2004, stands determined in affirmative by a Division Bench of this Court in Balwant Singh's case (supra), wherein,

it has been specifically held that the payments already made to the employees shall not be recovered. Admittedly, the payment of the amount assailed by the petitioner was released to respondent No.1, much prior to the aforesaid decision by this Court. Though, there was a specific direction given by the Appellate Authority while entertaining the appeal preferred on behalf of the petitioner-Board that the amount lying deposited with the Controlling Authority be not released to any party till its decision, but the fact remains that the said amount stands released before the said decision. Thus, this Court is not inclined to order recovery of the said amount, at this stage. In ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) Recent Apex Judgments 104***, it has been held 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.

This Court feels that the case in hand is squarely covered by the ratio of law laid down in Rafiq Masih's case (supra). The learned counsel for the petitioner-Board has failed to make out a case that the amount paid in excess to the employee is a result of any fraud or misrepresentation on his part.

In view of the above discussion, this Court does not find any merit in the present petitions and the same are consequently, dismissed.

19.05.2015

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(JITENDRA CHAUHAN)

JUDGE