

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

CWP-21619-2011 (O&M)
Date of decision : 06.04.2015

RULDU RAM @ RULDU SINGH

...Petitioner

V/S

PUNJAB STATE ELECTRICITY BOARD & ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Surinder Sharma, Advocate for the petitioner.

Mr. Gursimranjit Singh, Advocate
for Mr. Amit Aggarwal, Advocate
for the respondents.

JITENDRA CHAUHAN, J. (Oral)

1. Prayer in the present petition filed under Articles 226 and 227 of the Constitution of India is for quashing of impugned vouchers i.e. Annexures P-4 and P-5 and for the issuance of directions to respondents to grant pension to the petitioner, after counting the service, rendered by the petitioner upto 08.07.2011 and to pay the salary for the month of June and July, 2011 and to make the payment of arrears, leave-encashment, gratuity, the amount of GPF and other retiral benefits, along with interest @ 18% per annum from the date when it become due till its payment to the petitioner.

2. It is contended that the petitioner was appointed as RTM (Regular T-Mate) vide office order dated 22.02.1977. During his

service, he was issued the statement of GPF wherein his date of birth had been depicted as 04.12.1957. The service book and other record in respect of his service was maintained by the respondent No.3. The date of birth of the petitioner is specifically mentioned in the service record maintained by the office of respondent No.3 the date of birth of the petitioner has been recorded as 04.12.1951. The order of retirement dated 8th July, 2011 was issued by the respondent No.3, w.e.f. 31.12.2009 (Annexure P-3). Due to the fault and negligence on the part of respondent, the petitioner had worked upto 8th July, 2011 on the power lines and he was paid salary upto the month of May, 2011 on account of service rendered by him. However, the salary for the month of June and July, 2011 was not paid. Thereafter, in the month of September, 2011 respondent issued the voucher for effecting the recovery of Rs.5,30,294.00 on account of recovery of excess payment towards salary for the period of 01.01.2010 to May, 2011 by mentioning that retirement date of the petitioner was on 31.12.2009 and again one more voucher for Rs.2,39,140.00 on account of leave encashment payable to the petitioner for recovery was also issued. Aggrieved against, petitioner moved an application dated 03.10.2011 (Annexure P-6) but no action was taken thereupon.

3. On the other hand, the learned counsel for the respondents states that the salary was inadvertently paid to the petitioner, for the excess service rendered by him, for the period

from January 2010 to May 2011. The petitioner was to retire on 08.07.2011 but continued beyond the period of retirement, therefore, the amount paid beyond the date of retirement deserved to be recovered.

4. I have considered the rival contention of both the counsel for the parties.

5. In the writ petition it has been pleaded that the petitioner worked upto 8th July 2011 as Lineman in the office of respondent No.5. He was retired vide order dated 08.07.2011 w.e.f. 31.12.2009 as he was not retired on due date on account of oversight or negligence of the respondents and instead of giving salary and pension gratuity and other retiral benefits, the respondent passed the impugned orders Annexure P-4 and Annexure P-5 through which salary paid to petitioner for the period 01.01.2010 to 31.05.2011 have been ordered to recovered.

6. It has been held by Hon'ble Supreme Court of India in latest decision in case of State of Punjab vs. Rafiq Masih (White Washer) etc. reported in 2015 All India Reporter (AIR) (Supreme Court) 696. It is held in Para 12 of the judgment 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.”

7. The case of the petitioner is squarely covered with above mentioned judgment passed in bunch of Appeals. Since the petitioner has been retired from the Class-III post on 08.07.2011 w.e.f. 31.12.2009 and the impugned order Annexure P-4 and P-5 was

passed in the month of September 2011 i.e. after retirement of petitioner, therefore the case of the petitioner falls under categories (i) to (v) mentioned in Para 12 of the above mentioned judgment. Thus, it is held that the respondent cannot recover the salary amount from the petitioner as he served the respondent for the period from January 2010 to May 2011. It is further held that he is entitled to the salary etc. for June, 2011, till 8th July, 2011 for the period he performed his duties.

8. Keeping in view the fact that service record of the petitioner is with the respondents and due to the fault and negligence on the part of respondent, the petitioner had worked upto 8th July, 2011, the present petition is allowed and impugned vouchers i.e. Annexures P-4 and P-5 are, hereby, quashed along with a direction to the respondents to release all admissible retiral benefits and pension along with interest @ 8% per annum within four months from the receipt of certified copy of this order.

06.04.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether referred to reporter? Yes/No