

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

CWP-7371-2012

Date of decision : 31.03.2015

JOGINDER SINGH

...Petitioner

V/S

PB. STATE POWER CORP. LTD. & ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. H. S. Dhandi, Advocate for the petitioner.

Ms. Geeta Sharma, 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 the order dated 17.02.2012 (Annexure P-3) whereby respondents have ordered to withdraw the pay scale granted to the petitioner w.e.f. 01.04.1998 and has recovered the amount from the petitioner and further the petitioner has not been granted time bound pay scale on completion of 9 years service on the ground that petitioner was not entitled to the same and for issuance of directions to the respondents to release all the retiral benefits.

2. It is contended that petitioner joined Irrigation Department at Mukerian and he worked Mukerian and Anandpur Sahib Hydel Projects and on completion of those projects w.e.f. 01.04.1998 petitioner along with other workers was transferred to respondent No.1.

He joined respondent No.1 as per Punjab Government Policy and the petitioner was granted pay scale according to these Rules, to which he was entitled.

3. The learned counsel for the petitioner states that no notice was issued before passing the impugned order.

4. The learned counsel for the respondents submits that the petitioner was a work charge, retired in the pay scale of Rs.5500/-. However, inadvertently the calculation for release the retiral benefits was made on the basis of the pay scale of Rs.5700/-. When it came to the notice of the authorities, the necessary correction was carried out and deductions were sought to be ordered vide order dated 17.02.2012 (Annexure P-3).

5. The learned counsel for the respondents has not been able to place any document on record that the same was done on any misrepresentation on the part of the petitioner, that being so the petitioner retired on 13.03.2012, after rendering 35 years of service. The deductions were ordered to be made on 17.02.2012.

Heard.

6. Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) Recent Apex Judgments 104***. Para 12 listed the following suggestions:-

“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 by Para 12(i)

of Rafiq Masih's case (supra). In these circumstances, this petition is allowed with a directions to the respondents to release remaining retiral benefits to the petitioner along with excess recovered amount from the petitioner within 8 weeks from the receipt of certified copy of this order.

8. In case, the amount is not paid within stipulated period, the same will carry the interest @9.5% per annum on the delayed payment from the date it became due.

31.03.2015

ashok

(JITENDRA CHAUHAN)
JUDGE