

CWP No.5667-2013

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

CWP No.5667-2013

Date of Decision:26.02.2015

Raj Pal Malik

... Petitioner(s)

Versus

Uttar Haryana Bijili Vitran Nigam Limited and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: None for the petitioner.

Mr. P.S.Poonia and Mr. Sandeep Vermani, Advocates,
for respondents no.2 to 5.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to release the interest @ 18% per annum on delayed payment of retiral benefits i.e. gratuity and commutation and recovery of ₹ 99,056 be released. Prayer has also been made to the effect that the respondents be directed to allow the promotional increment under Rule 4.4. (a) (i) of CSR Vol. I, Part-I, on promotion to the post of J.E.-I.w.e.f 27.08.2009 from the post of J.E. (Field) and fix the pay accordingly and the difference between due and

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drawn of enhanced pay in lieu of promotion as J.E. be released alongwith interest.

Brief facts of the case are to the effect that the petitioner was appointed as Assistant Lineman on 01.09.1973 and on the basis of seniority-cum-merit, he was promoted to Lineman, Asstt. Foreman, Junior Engineer (Field) and Junior Engineer-I. He was retired on 30.06.2010 on attaining the age of superannuation. The respondents, vide order dated 19.10.2010, released 75% provisional pension but other retiral benefits like gratuity and commutation of pension were not released. The petitioner requested the respondents-department to release full pension as there was no inquiry pending against him. The petitioner also requested the respondents-department to allow him the arrears of pay admissible to him in lieu of promotion to the post of Junior Engineer-I w.e.f. 27.08.2009 but he was not paid the promotional benefits admissible to him under the rules. The petitioner is entitled to one grade increment in lieu of promotion to the post of J.E.-I under Rule 4.4 (a) (i) of CSR Vol. I Part-I. The petitioner requested the respondents-department to admit his claim, but to no avail. Hence, this writ petition.

Upon notice of motion, respondents put in appearance and filed written statement with the averments that the petitioner did not submit all the record of various offices where he was posted before his retirement. The petitioner himself is responsible for late payment of pensionary benefits. No increment/promotional benefit of the petitioner

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was withheld by the respondents. All the payments were made as per the rules of the Govt. of Haryana which have been adopted by the UHBVNL and service book of the petitioner was checked and verified by the Chief Accounts Officer, UHBVNL, Panchkula. An amount of ₹ 99,056/- was recovered from the Death-cum-Retirement Gratuity of the petitioner as per the details given below:

- (i) ₹ 1314/- on account of refixation of pay as verified by Chief Accounts Officer, Panchkula.
- (ii) ₹ 4838/- on account of late passing of safety code test as pay verified by Chief Accounts Officer, Panchkula.
- (iii) ₹ 7122.55 outstanding against the petitioner on account of missing parts and shortage of oils.
- (iv) ₹ 2273/- outstanding against the petitioner on account of Works Audit as intimated by Chief Auditor, UHBVNL, Rohtak.
- (v) ₹ 83,508/- outstanding against the petitioner as intimated by Xen, Sub Urban Division, Panipat.

The petitioner did not discharge his duties with sincerity, diligently and to the entire satisfaction of the concerned authorities.

I have heard learned counsel for the respondents and perused the record.

The service-book/service record of the petitioner has not been placed on record, therefore, in absence of the same, this Court cannot reach to any conclusion with regard to the relief claimed by the petitioner for grant of promotional benefit.

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So far as the issue in respect of effecting recovery from an employee after his retirement is concerned, the same has already been dealt with by the Hon'ble Supreme Court in Civil Appeal No.11527 of 2014, titled '**State of Punjab and others vs. Rafiq Masih (White Washer) etc.**', decided on 18.12.2014 and 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.*
- (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*

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to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms."

In the present case, the petitioner retired as Junior Engineer on 30.06.2010. An amount of ₹ 99,056/- has been recovered from the Death-cum-Retirement Gratuity of the petitioner. The issue of effecting recovery from the petitioner as involved in the present writ petition falls within the first three categories mentioned in ***Rafiq Masih's case (supra)***, therefore, the respondents-department cannot recover the amount from the gratuity of the petitioner.

A Coordinate Bench of this Court in CWP-1742 of 2013, titled '**Gopal Krishan vs. Uttar Haryana Bijli Vitran Nigam Limited and others**', decided on 12.12.2014 has dealt with the issue of grant of interest on delayed payment of retiral benefits and held as under:

"Be that as it may be, delay has taken place in making the different payments to the petitioner on account of different service benefits. Keeping in view the given facts and circumstances of the present case noticed

herein above, although some delay is certainly attributable to the petitioner but the entire delay cannot be held to be the responsibility of the petitioner alone. As per the peculiar facts and circumstances of the case, the delay seems to have occurred because of contributory negligence of both the parties.

In view of the above and striking a balance between the parties, interest of justice would be adequately met, if the respondents are directed to pay interest @ 9% per annum to the petitioner from the date when different amounts became due till the date of actual payment.

Consequently, the respondents are directed to do the needful within a period of three months from the date of receipt of certified copy of this order. However, if the needful is not done within the stipulated period, the petitioner would be entitled for interest on the delayed payment @ 12% per annum.

Resultantly with the above said observation made and directions issued, the present writ petition is partly allowed, however, with no order as to costs.”

The issue of effecting recovery from the petitioner after his retirement and issue of grant of interest on delayed payment of retiral benefits are squarely covered by the judgments rendered in ***Rafiq Masih's case (supra)*** and ***Gopal Krishan's case (supra)***, respectively. Accordingly, following the reasons mentioned in both the aforesaid judgments (supra), the respondents-department are directed to make the payment of due amount alongwith interest @ 9% per annum to the

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petitioner from the date when the amount became due till the date of actual payment. The needful shall be done within two months from the date of receipt of certified copy of this order. However, if the needful is not done within the stipulated period, the petitioner would be entitled for interest on the delayed payment @ 12 % per annum.

Disposed of in the aforementioned terms.

No order as to costs.

26.02.2015

parveen kumar

(Paramjeet Singh)
Judge