IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4457 of 2015 (O&M)
Date of decision: 15.07.2015

K.B. Gupta

...Petitioner

Versus

Haryana Power General Corporation Ltd., and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Vikas Chatrath, Advocate for the petitioner.

Mr. Ashok S. Chaudhary, Advocate
for respondents No.1 to 3.

Mr. Mahesh Dheer, Advocate for respondent No.4.

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Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Article 226 of the Constitution of India, petitioner seeks quashing of the impugned order dated 09.10.2014, (Annexure P-12) and order dated 10.02.2015 (Annexure P-15), whereby an amount of Rs. 1,33,044/- in 7 equal installments from his Pension on account of alleged excess payment made to him on account of Pension Equivalent to Gratuity (PEG) has been ordered to be effected. The petitioner has sought for the refund of sum of Rs.90,783/- which has been deducted unilaterally in breach of principles of natural justice by the respondent-Corporation.

2. The brief facts of the case are that the petitioner had joined the respondent-department on 19.01.1976 in the erstwhile HSEB which had been splited into various companies, the respondent No.2 HPGCL is one of these companies. The petitioner with his dint of hard work had been promoted to the post of Chief Engineer (Admn). Vide orders dated 16.03.2011, the petitioner was subsequently appointed as Director, HPGCL for a period of one year from the date of order or till the date of superannuation whichever is later. He was granted pension upon retirement as per the Rules governing his conditions of service. Thereafter, on 15.03.2012 (Annexure P-1), the State Government approved his extension as Advisor Special Projects for a period of one year from the date of assuming the charge. The matter was put up before the Board of Directors of the Corporation in its 88th Meeting vide agenda item No. 88.25 and 88.27 dated 17.08.2012 (Annexure P-2), which after consideration of the memorandum accorded ex-post facto approval to the proposal as brought out in the memorandum in respect of the petitioner. A communication was issued to the petitioner vide letter dated 24.08.2012 (Annexure P-3), mentioning that the petitioner had been allowed the same terms and conditions of engagement as that of Sh. D.S. Ahlawat. Memorandum in respect of appointment of Sh. D.S. Ahlawat is Annexure P-4. Appointment letter dated 22.04.2010

which was issued to Sh. D.S. Ahlawat is annexed as Annexure P-5. The terms and conditions of such an appointment were issued by the Board of Directors of the respondent-Corporation vide orders dated 22.04.2010 (P-5). Thereafter, petitioner had been issued an order on 19.06.2013 (Annexure P-9**)** as Advisor Special Projects and grant the pay as applicable to retired Govt. Officer on his re-employment**.** Vide the 92nd meeting of Board of Directors of HPGCL, Panchkula held on 06.08.2013 (Annexure P-10), the ex-post facto approval was granted for pay to the petitioner as was granted in the case of retired Govt.

3. It is contended that the petitioner is a retiree and once there was no misrepresentation or fraud by him and rather his pay had been fixed after various representations etc. As such, the recovered amount ought to be refunded including Rs.90,783/- alongwith the amounts deducted prior to the stay granted by this Court. Further, directions are liable to be issued that the recovery cannot be done. Resultantly, the demand of amount sought to be recovered of Rs.1,33,044/- is illegal and the amount of Rs.90,783/- already recovered, is to be refunded.

4. The learned counsel further contends that the amount cannot be recovered without following principles of natural justice i.e. issuance of show cause notice and grant of personal hearing, reliance in this regard is placed on **State of Orissa Vs. Dr. (Mrs.)**

Bina Pani, AIR 1967 SC 1269. As such, the order of recovery against the petitioner is in violation of principles of natural justice has been vitiated to the hilt and cannot sustain. Accordingly, for reduction of the pay, the respondent-Corporation ought to have given due opportunity.

5. Thirdly, it is well settled law that the administrative decisions/ authorities have to assign reasons while passing an order, the perusal of the impugned order dated 10.02.2015 (P-3) would show that even though a detailed reply was filed, yet by non-speaking and cryptic order qua sum of Rs. 1,33,044/- has been passed which cannot sustain. It is established that once no reasons are forthcoming for rejecting the claim, the same is liable to be set aside reliance is placed on **National Insurance Co. Ltd. Vs. Gulab Nabi and another, 2008(3) SCT 839 SC.**

6. The learned counsel cites ***State of Punjab*** *Vs.* ***Rafiq Masih****, 2015(1) SCT 195* and states that once the petitioner had retired from service, the Department had no right to recover the amount from his pensionary benefits. He further submits that otherwise also, such a recovery is even beyond the period of limitation of three years and is further against the provisions of Rule 2.2 of the Punjab Civil Services Rules as applicable to the State of Haryana.

7. On the other hand, the learned counsel for the

respondent-Corporation submits that after the retirement of the petitioner, he had been given contractual appointment as Advisor Special Projects, vide order dated 15.03.2012. He refers to Rule 7.17 and 7.18 of the Punjab Civil Services Rules, Vol-II and states that in the case of re-employment of any retired Govt., employee, his pay is to be fixed in accordance with the provisions made in the above said Rules. On re-employment of the petitioner, his pay was not fixed in accordance with the above Rules and he was paid excess salary beyond his admissible salary. Therefore, the recovery of over payment of salary is not going to cause any financial hardship to the petitioner and the impugned order dated 09.10.2014 (Annexure P-12) and order dated 10.02.2015 (Annexure P-15) have been rightly passed by the respondent-Corporation.

8. I have heard the learned counsel for the parties and perused the record with their able assistance.

9. In ***Rafiq Masih***, *2015(1) SCT 195*, the Hon'ble Apex Court has 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.*

10. In the present case, the petitioner was re-employed on a contractual post, vide order dated 22.04.2010 (Annexure P-1). The show cause notice dated 09.10.2014 (Annexure P-12), was served upon the petitioner after a lapse of more than three years. The petitioner had no knowledge that the amount that was being paid to him was more than what he was entitled to. Once the remuneration has been paid to the petitioner by the competent authority, the same cannot be recovered. The impugned order dated 10.02.2015 (Annexure P-15) has been passed when the petitioner had already left the job. Moreover, the amount, if paid, in excess, is not on account of any misrepresentation on the part of the petitioner; it is the department that granted him such a payment, believing that the petitioner was entitled for the same.

11. Therefore, keeping in view the above, the instant petition being squarely covered by the ratio of law laid down by the Hon'ble

Apex Court in **<u>Rafiq Masih's</u>** case (supra) is deserved to be allowed. Accordingly, the impugned orders dated 09.10.2014 (Annexure P-12) and dated 10.02.2015 (Annexure P-15), are set aside. The respondents are directed to refund the recovered amount and other benefits, if any, within a period of three months from the date of receipt of a certified copy of this order.

15.07.2015 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**