IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7420 of 2007
Date of Decision:06.06.2016

Balwant Singh

......Petitioner

Vs

State of Punjab and others

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. D.K. Bhatti, Advocate
for the petitioner.

Mr. B.M. Vinayak, DAG, Punjab.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed impugned letters dated 24.03.2006 (Annexure P1) and dated 19.02.2007 (Annexure P-5) in this writ petition on the ground that he had worked with the respondent-Department and stood retired on 31.12.2001 on attaining age of superannuation.

[2]. Petitioner retired as Fitter from the Department and was granted pension on 07.05.2002. Respondent authorities took the last pay drawn as the base for calculating entitlement of the petitioner in terms of his pension. All the increments which were earned by the petitioner were included towards last pay drawn

for the purposes of calculating retiral dues. The pension and other benefits were duly sanctioned by the respondent-authorities after scrutinizing the service record of the petitioner. There was no mis-representation or fraud on behalf of the petitioner. Dues were accordingly paid.

[3]. It is only on 24.03.2006, the Department of Finance, Punjab (Finance Pension Policy and Coordination Branch) issued clarificatory letter vide which it was directed that the incentives of special increments paid to the petitioner were ordered to be withdrawn. The special increments were required to be reduced while calculating the pensionary benefits and recoveries of the excess payment were ordered. Consequently, a show cause notice was issued to the petitioner on 28.12.2006 requiring him to explain as to why his pension could not be reduced/refixed after withdrawing the special increments.

[4]. Perusal of record especially Annexure P-3 prepared by the Sub Divisional Officer (Administration), P.R. & Rigging Division, RSD-Shahpurkandi revealed that initial pay scale of the petitioner was Rs.300-430/- on 17.10.1979. After pay proposals, it was found that on 19.01.1986, the pay of the petitioner was Rs.330/-. On 19.01.1986, revision of pay was done and pay scale of Rs.750-1350/- was given to the petitioner. On 01.05.1987, two special increments were given to

the petitioner and thereafter, on 01.06.1989, the petitioner was promoted as Fitter in the pay scale of Rs.950-1800/-.

[5]. The necessary details as projected in Annexure P3 further revealed that on 01.01.1993, 4 % of the salary was increased and thereafter on 01.02.1993, one special increment was also granted to the petitioner thereby making the proposed basic pay as Rs.1055+20/-. Thereafter on 01.07.1994, one more special increment was given to the petitioner and so as on 01.11.1994. The pay scale of the petitioner was further revised on 01.01.1996 to the tune of Rs.3120-5160/-. Petitioner was retired on 31.12.2001. All these increments were earned by the petitioner during his service from 17.10.1979 till 01.11.1994.

[6]. Petitioner was accorded revised pay scale from time to time including promotion to the post of Fitter as on 01.06.1989. The increments which were accorded to the petitioner were granted to him in a regular pay scale as is apparent from the aforesaid document Annexure P-3.

[7]. The respondents based their action on the basis that the services of the petitioner were regularized only w.e.f. 13.03.1996 and therefore, the benefits accorded to the petitioner as work charge employee were required to be deducted while computing emoluments towards pension. The reference was made to Rule 2.44 and Rule 4.4 (b) of Punjab

Civil Services Rules, Volume-I to contend that the benefits were not to be taken into account for the purposes of pensionary benefits. The respondents further contended that the increments were accorded on account of completion of qualifying period of 8/18 years as the petitioner was not qualified for those increments as per his length of regular service. The regular service of the petitioner was claimed to have commenced from 13.03.1996 to the date of his retirement i.e. 31.12.2001.

[8]. Having given thoughtful consideration to the arguments of both the sides, I am of the view that the petitioner stood retired on 31.12.2001 and has expired thereafter. The pensionary benefits were accorded to the petitioner on 07.05.2002. According to Rule 9.2 A (b) (iv) of Punjab Civil Services Rules, Volume-II, the recovery proceedings cannot be initiated after 6 months of retirement of the official. In the instant case, the pensionary benefits were accorded to the petitioner on 07.05.2002 and the recovery proceedings were sought to be initiated after issuance of clarificatory letter dated 24.03.2006 i.e. after more than 5 years of retirement of the petitioner.

[9]. In view of aforesaid, recovery proceedings cannot hold good inasmuch as that there was no mis-representation on behalf of the petitioner, nor any fraud was alleged by the Department while computing pensionary benefits of the

petitioner.

[10]. In the light of observations made in ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177*** and ***Sahib Ram Vs. State of Haryana, 1994(5) SLR 753,*** the benefits of pension once granted cannot be taken back in the manner as suggested by the respondent-Department. It is also strange to note that the petitioner was employed in service on 07.10.1979 and initial pay scale was provided to him. The basic pay of the petitioner was revised from time to time with the addition of increments. On 19.01.1986, his pay scale was revised. On 01.06.1989, he was promoted to the post of Fitter also. Till 01.11.1994, the petitioner was accorded revision of pay as well as grant of special increments from time to time on the basis of earned service benefits after showing efficiency and hard work. The respondent-Department kept on showing the petitioner as work charge employee even after grant of regular pay scale, revision of pay scale and even after promotion to the post of Fitter.

[11]. The claim of the respondent-Department is that for the purposes of pension, Rule 2.44 and Rule 4.4. (b) of Punjab Civil Services Rules, Volume-I are to be adhered to. Once the benefits paid bonafidely not on account of misrepresentation or fraud to the employee and recovery proceedings were not

initiated within 6 months of his retirement under the Rule 9.2 A (b) (iv) of Punjab Civil Services Rules, Volume-II, Department is estopped from making any recovery. The preposition of law as highlighted in Rafiq Masih (supra) and Sahib Ram (supra) squarely comes to the aid of the petitioner. Petitioner has already expired, therefore, the petitioner should have been treated to be a regular employee for all intents and purposes and the benefits accrued to him were lawfully given.

[12]. As a consequence of aforesaid observations, this writ petition deserves to be accepted. Letters dated 24.03.2006 (Annexure P-1) and dated 19.02.2007 (Annexure P-5) are accordingly quashed.

06.06.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**