IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 01.06.2016

CWP No.13449 of 2011

Om Parkash ...Petitioner

Vs.

Punjab State Power Corporation Limited & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.Dadwal, Advocate, for the petitioner.

Mr. Kunal Mulwani, Advocate, for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner retired as Internal Auditor from the Punjab State Power Corporation Limited (for short 'the Corporation') on attaining the age of superannuation on 31.09.2007. He was granted benefit of proficiency step up in January, 1994. He was offered promotion as Revenue Accountant on 10.03.1995. He chose to forgo his right to promotion on turn for personal reasons. The promotion offer came a year after he was granted and released benefit of proficiency step up on completion of 8 years of regular satisfactory service. Since proficiency step up was granted before he was offered promotion, then the same in my considered view could not be withdrawn since he met the pre-conditions on which the right is based, but the respondent – Corporation chose to withdraw it by order dated 14.02.2007 without notice or hearing vide Annex P-1. This has led to recovery of an amount of Rs.63,056/- from the salary of the petitioner.

2. The benefit of proficiency step up at stage 8 years has been withdrawn by the Finance Section of the respondent – Corporation citing Finance Circular No.64/89 dated 04.10.1989. As a result of this recovery, the petitioner's pension case was held up. Indisputably, the recovery was not effected till or before retirement. It is the stand of the petitioner that he was not wizened of the recovery order passed on 14.02.2007 at any time before or thereafter. Since the petitioner disclaimed knowledge of the letter dated 14.02.2007, this Court vide interim order dated 30.05.2016 directed the petitioner to appear in person to be confronted with the impugned letter which was presented in photocopy across the Bar. The Corporation was also directed to produce the original of the document together with any other contemporaneous document establishing whether the petitioner was informed before retirement or after retirement that he would suffer cut in pension due to alleged over payment of proficiency step-up as a result of giving up right to promotion. Pursuant to such directions, the petitioner appeared in person and has been confronted with the letter dated 14.02.2007 in court. He admits that the letter was got noted by him in token of receipt, but insisted that a copy of the same was not officially conveyed to him. He states that when it came to his knowledge, he came to this Court for directions for preservation and restoration of his right to proficiency step-up by praying for issuance of a writ of certiorari to nullify the recovery order and a mandamus for return of money deducted from pension. Faced with the situation, the respondent – Corporation was unable to produce record to show service of impugned order, including from the dispatch and receipt register to establish that the letter dated 14.02.2007 was communicated to the petitioner in 2007 to take legal effect. Therefore, I would not treat the petition as one which suffers from the vice of delay and laches as urged by

the counsel for PSPCL, when the petitioner approached the Court without inordinate delay in the year 2011 against the impugned order seeking its quashing.

3. The respondents in defence of the petition rely on the instructions dated 04.10.1989, wherein it is clarified that an employee who himself foregoes promotion offered to him is not eligible for grant of proficiency step-ups because proficiency step-ups are granted only when an employee serves in a scale of pay but is not promoted to a higher scale on account of lack of promotional opportunities or non-availability of a vacancy in the promotion scale.

4. However, the question at large is that the petitioner was granted benefit of 8 years proficiency step-up even before the promotion was offered to him the following year and therefore, the respondent – Corporation was in patent error of reasoning in imposing cut in pension and the action is neither sound in law or in fact. If permitted, it would be putting the cart before the horse, to use a worn expression, but which still builds a word picture. The right to proficiency step-up had become a crystallized right which had vested and accrued in petitioner's favour as he had not been promoted or offered promotion till then. If promotional opportunity presented itself afterward, the benefit already given in terms of rules was not retractable. On this ground the action taken must be reversed to prevent continued injustice as it suffers from substantial legal error.

5. There is another facet on which the petition is likely to succeed. This is with reference to one Rajesh Jindal, similarly placed, who was granted promotion after award of proficiency step-up vide order dated 20.08.1997, but the benefit was not withdrawn from him nor was cut in

pension imposed. The petitioner relied on this case to urge that he was unfairly discriminated against.

6. To understand the case of Rajesh Jindal, this Court passed an interim order on 05.05.2016 calling for an additional affidavit from the respondent – Corporation explaining the case of Rajesh Jindal with reference to order dated 20.08.1997 (Annex P-2) so that his case could be matched with the case of the petitioner vis-à-vis violation of the equality clause in Article 14 of our Constitution. In compliance thereof, an additional affidavit was been filed on 24.05.2016. Since the additional affidavit did not contain full particulars necessary for understanding the difference between the two instances, the same was returned to the counsel for the respondent – Corporation from the dais with permission to file a fresh affidavit containing material particulars including incorporating the date when the benefit, if was withdrawn from Rajesh Jindal and reasons thereof. Respondent has failed to respond in writing to the query. Even when the matter was finally heard on 01.06.2016 in the presence of the respective learned counsel, the respondent – Corporation was still unable to show that the benefit has been withdrawn from Rajesh Jindal and therefore it is accepted position that the benefit has not been withdrawn nor recovery ordered against Rajesh Jindal.

7. The issue: "Whether proficiency step-up/time bound pay scales already granted to an employee can be withdrawn on the ground that he/she refused to accept the subsequently offered promotion" has been elaborately dealt with by this Court in CWP No.2587 of 2009 titled '<u>Rattan Chand Vs. Punjab State Electricity Board & others</u>' decided on 12.08.2010 confirming the legal position in the negative. The benefit cannot be withdrawn once the subsequently offered promotion right was surrendered. The said view has been followed in CWP No.8915 of 2006 titled '<u>Amarjit Singh Vs. Punjab</u>

State Electricity Board & others' decided on 12.10.2010 by the learned single Judge. The petitioner is not only protected by this principle, but is also protected by a series of judgments ruling that recovery cannot be ordered even for mistaken overpayments when the employee has neither misrepresented facts nor has played fraud on the employer even if the payment was in excess of lawful dues. In the present case adverse action was taken behind the back of the petitioner due to wrong interpretation of rules. The petitioner also relies on the Supreme Court authority in Syed Abdul Qadir & others Vs. State of Bihar & others, (2009) 3 SCC 475 to fault the adverse order. Presently, the ground is amply covered by the recent decision of the Supreme Court in State of Punjab & others Vs. Rafiq Masih (White Washer) & others, AIR 2015 SC 696 which governs the subject matter of recovery of money of pensioners and those close to retirement with a year left and carves out the exceptions adumbrated and when it becomes impermissible to effect recoveries from pay and pension.

8. As a result of misapplication of the law the petitioner has been harassed and wronged for 9 years long years without any justification. Consequently, while quashing the impugned letter dated 14.02.2007 (Annex P-1), the present petition is allowed with costs of Rs.50,000/- to be paid to the petitioner and thereafter recovered from the erring officers, who delayed the payments without just cause or legal justification. There can be no cut in pension. The recoveries made, if any, be refunded. The petitioner has a right to benefit of proficiency step up on completion of 8 years of service at the appropriate time with the right to retain the same. Accordingly, the pay and pension of the petitioner be re-fixed and the monetary benefits be calculated in terms of this judgment and order. The amount be computed and paid within six weeks from the receipt of the certified copy of this order failing

which the salary of the Chairman -cum- Managing Director of the Corporation will not be paid to him till he does not steer clear the payment to the petitioner within the time allowed. The cost of the petition will be recovered from erring officer/s after fixing responsibility. In case, their culpability is established, then consequential orders be passed by the authority empowered to act in the Corporation so that the Corporation is not burdened financially. If recoveries have been made then those amounts will be refunded along with interest at the rate of 18% p.a. till payment in view of the aggravated nature of the withholding of money without legal justification. The result of the enquiry is directed to be placed on the record of this case after disposal for the perusal of the Court within a period of six months from today.

01.06.2016 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**