

Civil Writ Petition No.14154 of 2012 & others connected petitions

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. Civil Writ Petition No.14154 of 2012
Date of decision: 19.2.2016**

Sucha Singh ...Petitioner

Versus

Punjab State Power Corporation Ltd. and others ...Respondents

2. Civil Writ Petition No.17149 of 2012

Gurnam Singh ...Petitioner

Versus

Punjab State Power Corporation Ltd. and others ...Respondents

3. Civil Writ Petition No.17269 of 2012

Jaswant Singh ...Petitioner

Versus

Punjab State Power Corporation Ltd. and others ...Respondents

4. Civil Writ Petition No.3444 of 2016

Balwinder Singh ...Petitioner

Versus

Punjab State Power Corporation Ltd. and others ...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Anupam Bhardwaj, Advocate for the petitioners
(in all the petitions).

Brig. B.S.Taunque, Advocate for the respondents
(in all the petitions).

G.S.SANDHAWALIA, J (Oral)

This order shall dispose of Civil Writ Petitions No.14154, 17149, 17269 of 2012 and 3444 of 2016 as common question of facts and law are involved in these petitions. However, the facts have been taken

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from Civil Writ Petition No.14154 of 2012 for the purpose of deciding the present petitions.

The petitioner challenges the order dated 8.4.2011 (Annexure P/3) passed by respondent no.3 whereby recovery of ₹ 83,300/- has been ordered to be effected from the gratuity payable to the petitioner and prays for quashing of the order dated 23.4.2012 (Annexure P/5) passed by respondent no.2 whereby appeal filed by the petitioner against the impugned order dated 8.4.2011 has been dismissed on the ground that it is beyond the period of limitation.

The amount of recovery which has been effected is on the strength of decree dated 30.4.2007 (Annexure R/4) passed by the Civil Judge (Junior Division), Amritsar against the respondent-Board and the BSNL, Amritsar and wherein a sum of ₹ 6,80,000/- was directed to be paid along with interest by both the defendants i.e. the respondent-Corporation and the BSNL, Amritsar on account of death of Smt. Mohinder Kaur and Master Gurjasjit Singh due to electrocution.

The respondent-Corporation had issued show cause notice dated 10.10.2005 (Annexure P/1) regarding the incidence in which two persons had died on 5.9.2003. It is pertinent to mention here that at that point of time the Civil Suit dated 11.11.2003 had already been filed claiming compensation in which the Corporation was arrayed as defendant no.2. Thereafter, another show cause notice dated 11.1.2006 (Annexure R/2) was issued asking the explanation of the petitioner. The petitioner in response to the show cause notice gave his explanation that he had been attending the complaint which was about 20 Kilometers away and he had received the information and thereafter gone to the spot. The Telephone Department was sought to be held responsible as they had removed the

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wire because of which the mishap had happened. The defence is also taken that the telephone wire had snapped which came in touch with the LT line and thus the mishap had happened. Thereafter, the Board took no action on the said reply apart from conducting an enquiry by the Chief Electrical Inspector on account of a fatal accident in view of Section 161 of the Indian Electricity Act, 2003 (Annexure R/3). The said enquiry also does not in any manner put responsibility on any of the petitioners by name as such but only submits that non installation of fuses contrary to the stipulated capacity had been done and violation had been committed by the concerned staff of the supplier. Relevant part of the enquiry report reads as under:-

“Violations and Suggestions:

1. The Supplier had initially placed guarding between the telephone cable and the LT line at the time of its construction, on a violation of Rules 91 of the IE Rules, 1956 is found to have been committed.
2. Non installation of fuses contrary to the stipulated capacity, violation of Rule 50 of the IE Rules, 1956 has been committed by the concerned staff of the Supplier.”

The suit was thus decreed on 30.4.2007 in favour of the plaintiffs against the respondent-Corporation and the BSNL and a sum of ₹ 6,80,000/- was held to be payable by both the defendants i.e. respondent Corporation and the B.S.N.L., Amritsar. The issue of negligence of discharge of duties by the defendants and their staff/Linemen was also framed on the basis of which compensation had been awarded. The defendants had examined DW-1 Mr. Gurbinder Singh, DW-2 Mr. Tarsem Lal, Commercial Officer and Mr. Avtar Singh, Divisional Engineer Phones (legal). In the suit also, defence of the Corporation was that the accident in question was not caused by the carelessness of the Corporation in

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discharge of their duties rather the accident was denied and the liability was also accordingly denied. The statement of the witnesses were also in the same context. It is was thus not a case of the respondent-Corporation as such the liability was of the officials who were on duty and were responsible for the lapse on account of the alleged finding of the Enquiry Officer which had been reproduced above. Only on the strength of decree the recovery order was passed on 8.4.2011 whereby apportionment to the tune of 83,300/- interse the petitioners who were employees of the Board has been made. Reliance has been placed solely upon the fact that the appeal had been decided on 23.10.2010 and the department had been held liable to pay a sum ₹ 4,16,500/- and therefore, the recovery was directed to the extent of 1/5th of the share of ₹ 4,16,500/- from the gratuity of the employees.

The procedure which has been adopted by the Corporation is on the face of it absolutely violative of the principles of natural justice and without following any proper procedure. As noticed above, at the initial stage show cause notice dated 11.1.2006 had been issued which was duly replied on 4.4.2006. The respondent-Corporation did not act on the same and went to sleep and only once the decree was passed on 30.4.2007 and the appeal was decided on 23.10.2010, the impugned order had been passed. The amount was directed to be recovered from the employees some of whom had already retired by that time. The procedure thus for recovery which had been followed is violative of principle of natural justice. As noticed above even the stance of the Board before the Civil Court as such was of denying the negligence. It was not their case that the officials who were on duty were responsible and liable to pay the amount but recovery is being made on the basis of the compensation awarded.

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In such circumstances, it is held that the impugned orders are not justifiable and arbitrary. Accordingly, the same are quashed and the recovery order against the petitioners are set aside. The amount recovered from the petitioners shall be refunded to them with interest at the rate of 7% per annum within a period of two months from the date of receipt of a certified copy of this order.

Accordingly, all the writ petitions are allowed.

A photo copy of this order be placed on the record of each connected case file.

February 19, 2016
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(G.S.SANDHAWALIA)
Judge