

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CWP No.18433 of 2014**

Ram Singh
Versus ... Petitioner

State of Punjab & others ... Respondents

(2) **CWP No.18436 of 2014**

Kehar Singh
Versus ... Petitioner

State of Punjab & others ... Respondents

(3) **CWP No.24156 of 2015**

Jang Bahadur
Versus ... Petitioner

State of Punjab & others ... Respondents

Decided on:16.05.2016

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

Present : Mr.C.M.Chopra, Advocate, for the petitioner(s).

Mr.Anshul Gupta, AAG, Punjab.

Mr.Mahesh Dheer, Advocate, for respondent No.5
(in CWP-24156-2015).

G.S. Sandhawalia , J.

This judgment shall dispose of CWP-18433, 18436-2014 & 24156-2015, involving common questions of law and facts. However, to dictate order, facts have been taken from CWP-18433-2014 titled *Ram Singh Vs. State of Punjab & others*.

Petitioner seeks a writ of mandamus, directing the respondents to release the withheld amount of Rs.98,433/- on account of withdrawal of the pay-scale of Rs.1200-2100, after retirement, in the absence of any misrepresentation or fraud.

Petitioner, who is working as a Carpenter with the Ranjit Sagar Dam Project (for short, 'RSDP'), Shahpurkandi Township, Pathankot, retired on 31.01.2008, after serving from 06.07.1972 to 26.09.1977 with the BSL Project, Pandoh and thereafter, on work-charge basis, had been appointed from 02.12.1981 with the RSDP and had been regularized w.e.f. 13.03.1996. He had, thereafter, been granted pay-scale of Rs.1200-2100 w.e.f. 04.01.1986, as per decision dated 22.11.1996 by the Chief Engineer. On account of the decision to withdraw the said benefits vide circular dated 11.09.2002, the department failed to release the retiral benefits. The issue of special increments had also been raised and in CWP-5568-2008 titled *Charan Dass & others Vs. State of Punjab & others*, decided on 27.05.2009 (Annexure P5), the same had been denied, which was further modified by the Apex Court. The recovery was, thus, made of Rs.98,433/- from the Gratuity on account of withdrawal of the pay-scale of Rs.1200-2100, after his retirement, vide order dated 14.09.2010 (Annexure P7), post his retirement.

Respondents, in their written statement, justified the said action on the ground that CWP-1067-2003 titled *Thein Dam*

Workers Union (Regd.), Shahpurkandi Vs. State of Punjab & others, decided on 27.03.2009, the Division Bench had given them liberty to refix the pay and accordingly, the excess payment was to be recovered. Petitioner was getting his monthly pension at Rs.8650/-, regularly and no recovery was being effected. Regarding the issue of special increments, the stance taken by the respondents was that in terms of the orders passed by the Apex Court on 16.07.2014 in **State of Punjab Vs. Tarlok Chand & others 2014 (4) SCT 361**, the revised pension case was sent to the Accountant General and the revised DCRG and Leave Encashment were to be released to the petitioner.

The said issue of recovery was subject matter of consideration in CWP-22296-2011 titled *Thein Dam Workers Union Vs. State of Punjab & others*, decided on 27.02.2016. After taking into consideration the order dated 14.09.2011, passed in CWP-17856-2000 titled *State of Punjab & others Vs. Ranjit Sagar Dam Mazdoor Union & others* and the judgment of the Apex Court in **State of Punjab & others Vs. Rafiq Masih (White Washer) & others 2015 (1) RSJ 177**, it was held as under:

“As noticed above, it is not disputed that the members of the petitioner-union are doing the job of fitters, carpenters, electricians, welders, plumbers, masons, pump operators, turners, auto mechanics, linesman and belong to the category of the exceptions which have been protected by the Apex Court, which would be clear from Annexure P-12. The petitioners have

also placed on record that 30 members of the union already stand retired between the years 2003 to 2014 (Annexure P-14). The specific reasoning in *Rafiq Masih's case (supra)* for excluding the retired set of employees is that they would have necessarily spent that amount which they would have received by virtue of the extra payment made to them. The recovery orders and the details of recovery would also go on to show that amounts ranging from ₹1,753/- to ₹3,00,000/- have been received by them (Annexure P-13) for periods ranging over a decade from 2002 onwards. The circulars issued by the Chief Engineer were in the year 1995 and 1996. The awards in question were passed in 1998 and 1999. The order of recovery which was subject matter of challenge in the earlier writ petition was dated 01.01.2003. Therefore, the workmen had drawn the extra benefits for a period in excess of five years from the date of circulars/awards before their pay was refixed. In a similar dispute involving another union, this Court has already granted the relief of recovery after noticing the order of the Division Bench dated 27.03.2009.

Keeping in view the cumulative aspects in mind and the fact that the members of the petitioner-union would be identically placed as to the other members of the Ranjit Sagar Dam Mazdoor Union, it would be iniquitous to deny the petitioners similar relief wherein similarly situated persons have got relief from this Court and the said order has not been challenged by the respondents.

Accordingly, this Court is of the opinion that the case of the petitioner-union falls within the categories which are exempted and protected from the recovery proceedings. The Division Bench had also directed that the respondents were to take appropriate decision regarding the recovery of the amount which had been paid in view of the stays granted in the writ petitions. Thus, a large number of workmen had got higher pay

scales till 27.03.2009 when they had challenged the order dated 01.01.2003, regarding which also, the respondents have not passed any separate order in spite of the directions issued by the Division Bench and have directed whole scale recovery w.e.f. 11.09.2002.

Resultantly, this Court is of the opinion that the members of the petitioner union are entitled for the benefit of the principles laid down in the judgment of *Rafiq Masih's case (supra)*.

Accordingly, order dated 19.05.2010 (Annexure P-3) directing recovery against them is quashed and the writ petition is allowed.”

Accordingly, keeping in view the above discussion, the present writ petitions are disposed of and the pay fixation of the petitioner is upheld but the respondents are not entitled to make any recovery. Secondly, in view of the undertaking given in CWP-25992-2015 titled *Kuldeep Singh & others Vs. State of Punjab & others*, decided on 28.04.2016 and in view of the stance taken in the written statement therein, the petitioners will be given the benefit of special increments, as directed by the Apex Court. The respondents, having not been held entitled to recover the amount on account of re-fixation, will refund the same, along with 6% per annum interest from the date it fell due till the date of payment.

MAY 16, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE