

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21334 of 2013
Decided on : 08.04.2016

Mukand Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.D.D.Bansal, Advocate, for the petitioner.

Mr.Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

Prayer in the present writ petition is for quashing of the order dated 24.07.2013 (Annexure P7) whereby he has been directed to deposit a sum of Rs.1,80,040/-, after adjusting Rs.44,998/-, by respondent No.3. Similarly, vide communication dated 26.08.2013 (Annexure P8), which is also subject matter of challenge, he was asked to deposit the said amount.

The said recovery of Rs.2,25,038/- is on the ground that the petitioner had rendered 2 years of additional service as Baildar and retired on 31.01.2004. However, on account of his writ being allowed on 16.04.2012 (Annexure P1), it had been directed that he will be promoted w.e.f. 27.02.1991 as Sub-Inspector, Agriculture, for which, the retirement age is 58 whereas the retirement age for Baildar is 60. Thus, in view of this, the

respondents are seeking to recover the amount on account of the fact that the petitioner had worked for an additional 2 years, on the lower post, but was granted fixation of promotion, subsequently. Respondents are, thus, recovering the amount by calculating the amount for the additional 2 years of service and after adjusting the amount which the petitioner was held liable to be paid, as Sub-Inspector.

It is not disputed that the petitioner continues to draw his pension on the higher post. A perusal of the order of this Court in CWP-18969-1991, would go on to show that the petitioner was granted the benefit of promotion on account of the fact that he had been put down in seniority on account of the fact that he had been transferred from one district to the other. However, seniority was to be drawn at State level and therefore, he was to be given promotion from the date his juniors were given promotion. It was, accordingly, noticed that the petitioner had retired and was granted the benefit from the date his juniors were promoted.

Resultantly, it is apparent that it was on the fault of the State that the petitioner had been denied his promotion. If he had been granted promotion at the requisite time, he would have worked on a higher post and would have retired at the age of 58 years. It is on account of the litigation which he had initiated in the year 1991 which was finally decided in the year 2012, that the fruits of the same accrued to him and cannot be denied, in any

manner. He worked for an additional 2 years, doing the work of Baildar and was, accordingly, paid the salary of the same post.

Even otherwise, this Court is of the opinion that the principles laid down in the case of **State of Punjab & others Vs. Rafiq Masih (White Washer) & others 2015 (1) RSJ 177** will also come to the assistance of the petitioner. In the said judgment, it has been held that recovery at the time of retirement cannot be effected from Class C & D posts and if a person has drawn the payment for more than 5 years before the order of recovery is made. In the present case, recovery is being effected from the year 2013 whereas the petitioner had retired way back in the year 2004 and drawn the said amount from 2002 till 2004.

Accordingly, the present writ petition is allowed. Orders dated 24.07.2013 & 26.08.2013 (Annexures P7 & P8, respectively) are, hereby quashed. Petitioner will also be refunded Rs.44,998/-, which has been recovered from him, by way of adjustment, within two months from the date of the receipt of the certified copy of this order, failing which, he will be entitled for interest @ 7% per annum, till it is paid.

APRIL 8, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE