

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19278 of 2014
Decided on : 11.04.2016

Laik Singh

... Petitioner

Versus

Punjab State Power Corporation Ltd. & others

... Respondents

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

Present : Mr.S.K.Rattan, Advocate, for the petitioner.

Mr.Roshal Lal Sharma, Advocate,
for respondents No.1 to 4.

G.S. Sandhawalia, J.

Petitioner, who is a retired Junior Meter Reader, seeks refixation of his pay which has been reduced and an amount of Rs.80,357/- has been recovered without passing any order and without affording any opportunity of hearing. It has been pleaded that no details of recovery were provided inspite of making representation dated 10.04.2014 (Annexure P3) and as per the revised refixation chart, recovery of Rs.79,755/- had been calculated. The amount of Rs.80,357/- was recovered from the gratuity and the balance amount of Rs.1,24,908/- had been paid on 10.02.2014. Inspite of serving a legal notice dated 05.07.2014 (Annexure P4) the respondents have not responded to the same. It has, accordingly, been argued that the petitioner had retired on 31.05.2013 and recovery from the retiral benefits was not justified.

In the reply filed, the respondent-Corporation has taken the plea that the Chief Engineer had given 2 increments, inadvertently, to which he was not entitled and therefore, the amount was calculated and recovered from the petitioner. Plea taken was that refixation could be done in case of a fault detected and it was public money.

Accordingly, this Court is of the opinion that the petitioner is squarely covered by the observations made by the Apex Court in **State of Punjab & others Vs. Rafiq Masih (White Washer) & others 2015 (1) RSJ 177** wherein it has been held that at the time of retirement, recovery cannot be effected from Class III and Class IV employees. As noticed also, the said action also is in violation of the principles of natural justice and the same cannot be justified as the petitioner was never put to notice. The principles read as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

Accordingly, the present writ petition is allowed and a writ of mandamus is issued to refund the amount which had been recovered, i.e., Rs.80,357/- along with 8% per annum interest from the date it became due, i.e., 01.08.2013 till the date it is paid. Needful be done within a period of 2 months from the receipt of a certified copy of this order. In case the payment is not made, within the prescribed period, the petitioner shall be entitled for arrears along with 10% per annum interest. It is, however, made clear that the respondents are at liberty to refix the pay/pension of the petitioner and the said order of refixation has not been set aside. The same be done after following proper procedure by adhering to the principles of natural justice.

APRIL 11, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE