IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25505 of 2012
Date of Decision:- 27.7.2016.

Mahinder Singh Ex. Tractor Driver

......Petitioner

Versus

Union of India and others

.......Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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Present: Mr. Ashutosh Kaushik, Advocate for the petitioner.

Mr. Vikrant Pamboo, Advocate for
Mr. Rakesh Kumar Nagpal, Advocate for
the respondents.

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P.B. BAJANTHRI, J. (Oral)

1.) In the present case, petitioner has prayed for quashing of order dated 22.8.2012 – internal communication between Senior Account (Lekha) Officer (MF) to Chief Controller of Defence Account, Delhi Cantonment (Annexure P-10). Further he sought for a direction to the respondents to release a sum of ₹ 63,883/- which has been deducted from the GPF fund and adjusted towards alleged to be not remitted advance amount taken by the petitioner on 05.05.1993.

2.) The petitioner joined service as a Tractor Cleaner in the Military Dairy Farm on 01.02.1971. He has earned promotion to the cadre of Tractor Driver in the year 1973. He has attained age of superannuation and retired from service on 31.5.2010. His retiral benefits were settled except GPF amount to the tune of ₹ 1,70,134/-. Out of GPF amount, a sum of ₹ 1,17,887/- has been paid to the petitioner on 14.12.2011 while withholding a sum of ₹ 63,883/- towards adjustment of loan obtained by the petitioner.

3.) Learned counsel for the petitioner submitted that a sum of ₹ 600/- was deducted from time to time towards loan obtained for a sum of ₹ 12,000/- which is evident from Annexure P-5 and Annexure P-6. In view of these facts and circumstances, deduction of ₹ 63,883/- by the respondent is contrary to the facts. Thus, the petitioner is entitled to a sum of ₹ 63,883/- along with interest @ 18 % per annum. On the other hand, learned counsel for the respondent submitted that the petitioner is due in respect of advance of ₹12,000/- taken by the petitioner on 05.05.1993. There was no deduction while he was in service, therefore, the respondents have rightly deducted loan amount from GPF of the petitioner a sum of ₹ 63,883/- and as such, there is no infirmity in deduction as well as passing the internal communication dated 22.8.2012 (Annexure P-10) which explains the details of deduction.

4.) Heard learned counsel for the parties.

5.) The respondents are bound to set right the service records before an employee retires from service. In the present case, the petitioner's retiral benefits have been settled as and when he retired in the month of May, 2010. However, GPF amount has been withheld to the extent of ₹ 1,70,134/- and there is a deduction of ₹ 63,887 from the GPF amount The remaining amount of ₹ 1,17,887/- has been released on 14.12.2011. Perusal of the record, it is evident that before deduction of ₹ 63,883/- from GPF account, no notice has been issued to the petitioner. If the respondent had issued a notice immediately after his retirement, the petitioner would have explained the circumstances relating to deduction of ₹ 600/- (Annexures P-5 and P-6) to demonstrate that there is already a deduction from petitioner's salary. Now at this stage, question of issuance of notice and order of recovery is impermissible. Since the petitioner is Class-III employee, the Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih 2015 (1) SCT 195*** held that no recovery shall be made. Even if notice is issued to the petitioner, he is in a position to explain the deduction made from the salary as is evident from Annexures P-5 and P-6. Thus, internal communication dated 22.8.2012 (Annexure P-10) giving the details relating to deduction of ₹ 63,883/- is set aside. The respondents are directed to release the withheld GPF amount of ₹ 63,883/- to the petitioner. The respondents are also directed to pay interest @ 9 % per annum for the amount of ₹ 1,17,887/- for the period from 1.9.2010 to 14.12.2011 and further interest @ 9 % per annum on the amount of ₹ 63,883/- from 1.9.2010 till the payment of ₹ 63,883/- is made.

6.) Writ petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

July 27, 2016.
sandeep sethi

Whether speaking/reasoned:YesWhether ReportableNo