

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 844 of 2011 (O&M)
Date of Decision: 16.11.2016**

Kaur Singh

..... Petitioner

Versus

The Punjab State Power Corporation Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. A.K. Walia, Advocate
for the petitioner.

Mr. Randeep Singh Bains, Advocate
for the respondents-PSPCL.

JASWANT SINGH, J. (ORAL)

Petitioner-Kaur Singh was appointed as Sewadar in the year 1976 with the erstwhile Punjab State Electricity Board (now Punjab State Power Corporation Limited), and in terms of the incentive policy granting higher pay scale to the employees on completion of 9/16 years' service, he was granted higher pay scale of ₹ 950-1800 w.e.f. 16.10.1992 after completion of sixteen (16) years' service as Sewadar. The said pay scale, on revision of pay scales w.e.f. 01.01.1996, was revised to ₹ 3370-6100, and, thus, he was placed in the said revised pay scale of ₹ 3370-6100. The petitioner was promoted to the post of Hawaldar on 02.06.1998, which was carrying the functional pay scale of ₹ 2930-5300. On promotion, he was granted an increment, although admittedly the promotional post carried a lower pay scale. The illegality was noticed and vide order dated 10.03.2010, the pay of the petitioner was reduced by withdrawing the

aforesaid promotional increment illegally given at the time of promotion in terms of the Finance Circular No. 74/90 dated 26.12.1990. Consequently, a recovery for a sum of ₹ 48,967/- (Forty Eight Thousand Nine Hundred Sixty Seven only) was ordered vide impugned letter dated 16.08.2010 **(Annexure P-2)**. Hence, the writ petition seeking quashing of the letter dated 16.08.2010 **(P-2)**, as also the recovery of ₹ 48,967/-.

This Court, vide order dated 18.01.2011, issued notice of motion and directed that further recovery from the petitioner shall remain stayed.

The petition was admitted vide order dated 29.11.2011. Now, miscellaneous application bearing CM No. 12782 of 2016 has been moved seeking disposal of the writ petition in terms of the recent authoritative judgment of Hon'ble Supreme Court in case of State of Punjab and Others Versus Rafiq Masih 2015 (1) SCT 195.

Learned counsel for the petitioner contends that the petitioner belongs to Class-IV service and has, now, retired and in the light of directions contained in Para-12 of the aforesaid judgment of Hon'ble Supreme Court, there being no misrepresentation on part of the petitioner-employee, no recovery can be affected.

Learned counsel for the respondents does not dispute the proposition of law, enunciated in the above cited judgment, and is also unable to oppose the recovery keeping in view the mandate of the said judgment, however, canvasses that as per the Finance Circular No. 74/90, the reduction and consequent fixation of pay of the petitioner, at least, is correct.

In rebuttal, learned counsel for the petitioner does not oppose the withdrawal and the re-fixation of pay, but only restricts his prayer to the recovery of the petitioner.

After hearing learned counsel for the parties, there is no dispute that in the facts of the present case, restricted relief claimed deserves to be allowed. The Hon'ble Supreme Court in above cited judgment in Para-12 has laid down 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. ”

There is no doubt that the payments on account of the promotional increment as Sewadar were mistakenly given to the petitioner, and since the petitioner, belongs to Class-IV Service, is covered under Para No. 12 [Clause-(i)], reproduced here-in-above, of above cited Hon'ble Supreme Court's judgment, therefore, memo/letter dated 16.08.2010 (P-2) is set aside to the extent that seeks to recover the excess salary for a sum of ₹ 48,967/-. It is held that the petitioner is entitled to the refund of the portion of the aforesaid amount, already recovered from him.

In view of above, present petition is allowed in above terms. The recovered amount shall be refunded to the petitioner within a period of two months from the date of receipt of the certified copy of this order.

November 16, 2016
'dk kamra'

(JASWANT SINGH)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	No