IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3043 of 2014
Decided on : 11.04.2016

Mohinder Pal

... Petitioner

Versus

Punjab State Power Corporation Ltd. & others

... Respondents

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

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

Mr.R.L.Sharma, Advocate, for the respondents.

G.S. Sandhawalia, J.

Petitioner seeks quashing of the order dated 09.12.2013 (Annexure P6), vide which, the benefit of increments had been withdrawn and recovery has been directed.

The pleaded case of the petitioner is that he was working as Assistant Laboratory Attendant since 1985 in the Mukerian Hydel Project, which was transferred to the erstwhile respondent-Board. His services had been regularized in the year 1998 and he was promoted as Junior Meter Reader on 12.06.2000 and retired on 31.03.2013. The petitioner was entitled for the work charge period in the Mukerian Hydel Project, prior to his regular appointment on 10.01.1998. He filed CWP-21655-2013, which was disposed of on 30.09.2013, to consider his claim and pass a speaking order, for the purpose of release of his pensionary benefits, after counting his past work and work charge services. The petitioner was asked to deposit the EPF share of the Board amounting to Rs.94,715/-, which he deposited on 29.11.2013 and thereafter, he was informed vide the impugned order that a sum of Rs.1,18,165/- which had been paid in excess on account of promotional increments, was found to be withdrawn and which was public money. Accordingly, recovery was effected from his gratuity which was unwarranted for. It has, accordingly, been submitted that the action was without following the principles of natural justice as no show cause notice was ever issued to him before passing the order of recovery.

The respondents, in their written statement, justified the impugned order on the ground that excess payment had been made to him as per the recovery sheet (Annexure R1) and office order dated 15.04.2014 was also issued (Annexure R3) showing the details of the excess amount which had been paid as well as the amount sought to be recovered. It was pleaded that the petitioner was wrongly given promotional increments and therefore, had also drawn the excess pay till his retirement on 31.03.2013. His work charge period was counted and he was paid gratuity on 01.01.2014 while the leave encashment was paid on 10.04.2013 and GPF on 07.08.2013.

Counsel for the petitioner has restricted his argument to the issue of recovery only.

Thus, the above sequence of events would go on to show that the amount of Rs.1,18,165/- has now been sought to be deducted from the retiral dues of the petitioner, post his retirement, i.e., after 31.03.2013. The same has been done without even giving any opportunity of hearing and by making the deductions at his back, which cannot be approved in any manner, since it was in violation of the principles of natural justice as no show cause notice had been issued to him, in spite of his civil consequences having been involved. He should have been associated before passing any such order.

It is not disputed that the employer has a right to refix the pay/pension in case it is found to be incorrect, but a proper procedure should have been followed, which has not been done in the present case. Accordingly, this Court is of the opinion that the petitioner's case is 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 and secondly, if the amount has been drawn for more than 3-5 years, the same cannot be recovered since the recovery was done post his retirement and the petitioner is also covered and being a Group C and Group D employee. 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, the order of recovery dated 09.12.2013 (Annexure P6) is quashed. The amounts which have been recovered from the retiral benefits of the petitioner, shall be refunded to him, within 2 months from the date of the receipt of the certified copy of this order, along with interest of 7% per annum from the date they became due on his retirement. In case payment is not made within the prescribed period, the rate of interest shall go up to 9%. It is made clear that it is open to the respondents to refix the pay and revise pension, however, after following proper procedure and issuing show cause notice to the petitioner.

(G.S. SANDHAWALIA)
JUDGE

APRIL 11, 2016
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