

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27254 of 2015

Decided on:16.05.2016

Kamal Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

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

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

Mr.Anshul Gupta, AAG, Punjab.

G.S. Sandhawalia , J.

Petitioner seeks restoration of 4 special increments, as per decision of the Apex Court in **State of Punjab Vs. Tarlok Chand & others 2014 (4) SCT 361**, and for release of the withheld amount of Rs.1,26,606/- on withdrawal of the special increments and Rs.2,83,487/- on account of the withdrawal of pay scale of Rs.1200-2100.

The case of the petitioner is that he was an employee of the Ranjit Sagar Dam Project (for short, 'RSDP'), Shahpurkandi Township, Pathankot and was working as a Fitter, who retired on 31.03.2012. The special increments were granted from time to time for meritorious work and the pay scale of Rs.1200-2100, w.e.f. 01.01.1986 had been allowed. While releasing the retiral dues, the Department had withdrawn the benefit of special increments and the scale and ordered recovery. Resultantly, after retirement, while finalizing his retiral papers, vide order dated 31.05.2012, the said recovery was done. His further case is that in view of the decision

in Tarlok Chand's case (supra) on 16.07.2014, vide office order dated 25.02.2015 (Annexure P7), recovery of Rs.1,26,606/-, on account of the withdrawal of the special increments, was ordered to be released. He has, thereafter, represented on 31.07.2015 (Annexure P8) that the amount which had been ordered to be released, be paid to him along with a sum of Rs.2,83,487/- on account of the withdrawal of the scale of Rs.1200-2100 and to recover the same.

The respondents, in their written statement, have placed reliance upon the decision of the Division Bench in CWP-1067-2003 titled *Thein Dam Workers Union (Regd.), Shahpurkandi Vs. State of Punjab & others*, decided on 27.03.2009, wherein the refixation was upheld. Reliance was, accordingly, placed that liberty had been granted to take appropriate decision for recovery of the amount, to avoid undue hardship and financial burden and that the Apex Court had upheld the order on 04.09.2009. It was further averred that the recovery against special increments amounting to Rs.1,26,606 had been released and the FA & CAO had prepared the bill on 17.12.2015 and submitted to the Treasury Office, Jogial, for payment.

Thus, on one account, the claim of the petitioner regarding the amount on withdrawal of special increments has been admitted and accordingly, the respondents shall ensure that the payment is made as was also undertaken by them in CWP-

25992-2015 titled *Kuldeep Singh & others Vs. State of Punjab & others*, decided on 28.04.2016.

Regarding the second issue of recovery on account of withdrawal of pay-scale of Rs.1200-2100, the said issue of recovery was subject matter of consideration in CWP-22296-2011 titled *Thein Dam Workers Union Vs. State of Punjab & others*, decided on 27.02.2016. After taking into consideration the order dated 14.09.2011, passed in CWP-17856-2000 titled *State of Punjab & others Vs. Ranjit Sagar Dam Mazdoor Union & others* and the judgment of the Apex Court in **State of Punjab & others Vs. Rafiq Masih (White Washer) & others 2015 (1) RSJ 177**, it was held as under:

“As noticed above, it is not disputed that the members of the petitioner-union are doing the job of fitters, carpenters, electricians, welders, plumbers, masons, pump operators, turners, auto mechanics, linesman and belong to the category of the exceptions which have been protected by the Apex Court, which would be clear from Annexure P-12. The petitioners have also placed on record that 30 members of the union already stand retired between the years 2003 to 2014 (Annexure P-14). The specific reasoning in *Rafiq Masih's case (supra)* for excluding the retired set of employees is that they would have necessarily spent that amount which they would have received by virtue of the extra payment made to them. The recovery orders and the details of recovery would also go on to show that amounts ranging from ₹1,753/- to ₹3,00,000/- have been received by them (Annexure P-13) for periods ranging over a decade from 2002 onwards. The circulars issued by the Chief Engineer

were in the year 1995 and 1996. The awards in question were passed in 1998 and 1999. The order of recovery which was subject matter of challenge in the earlier writ petition was dated 01.01.2003. Therefore, the workmen had drawn the extra benefits for a period in excess of five years from the date of circulars/awards before their pay was refixed. In a similar dispute involving another union, this Court has already granted the relief of recovery after noticing the order of the Division Bench dated 27.03.2009.

Keeping in view the cumulative aspects in mind and the fact that the members of the petitioner-union would be identically placed as to the other members of the Ranjit Sagar Dam Mazdoor Union, it would be iniquitous to deny the petitioners similar relief wherein similarly situated persons have got relief from this Court and the said order has not been challenged by the respondents.

Accordingly, this Court is of the opinion that the case of the petitioner-union falls within the categories which are exempted and protected from the recovery proceedings. The Division Bench had also directed that the respondents were to take appropriate decision regarding the recovery of the amount which had been paid in view of the stays granted in the writ petitions. Thus, a large number of workmen had got higher pay scales till 27.03.2009 when they had challenged the order dated 01.01.2003, regarding which also, the respondents have not passed any separate order in spite of the directions issued by the Division Bench and have directed whole scale recovery w.e.f. 11.09.2002.

Resultantly, this Court is of the opinion that the members of the petitioner union are entitled for the benefit of the principles laid down in the judgment of *Rafiq Masih's case (supra)*.

Accordingly, order dated 19.05.2010 (Annexure P-3) directing recovery against them is quashed and the

writ petition is allowed.”

Accordingly, the present writ petition is disposed of, keeping in view the above reasoning. The respondents are directed to refund the two amounts of Rs.1,26,606/- and Rs.2,83,487/- to the petitioner along with 6% per annum interest from the date it fell due till the date of payment.

MAY 16, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE