IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4777 of 2014
Decided on : 11.04.2016

Surinder Paul Singh

... 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.Y.P.Khullar, Advocate, for the respondents.

G.S. Sandhawalia, J.

Petitioner seeks quashing of the order dated 28.02.2014 (Annexure P7), vide which the benefit of 2 increments given to the petitioner, as Junior Meter Reader had been withdrawn and recovery had been ordered.

A perusal of the order, which is under challenge, would go on to show that it was passed on the basis of the representation made by the petitioner, which has been replied by respondent No.4. Vide the said order, the said respondent has come to the conclusion that the petitioner who had been appointed in the year 1978 as Work-charge Mate and thereafter, regularized, had been promoted on 12.06.2000 as Junior Meter Reader. He had been given 2 increments each, as per the revised pay-scale of 1996 whereas he was only entitled to one increment, as per the circular dated 15.10.2009. At the time of retirement on 31.01.2013, pension was, thereafter, ordered to be released to him vide Annexure P7 dated 28.02.2014 and similarly, his gratuity was ordered to be released. However, a recovery of Rs.1,42,610/- on account of the excessive amount received by him due to the wrong increments obtained by him, was ordered and the remaining amount of Rs.70,421/- was to be paid to him. Resultantly, the present writ petition has been filed.

From a perusal of the impugned order in question, it would be apparent that 2 facts are not disputed, that the petitioner had already retired on 31.01.2013 and that he had been drawing the said 2 increments for almost 13 years, since the benefit accrued to him in the year 2000. It is not the case of the respondents, in the impugned order, that it was at the instance of the petitioner or that there was any misrepresentation due to which, he had benefitted. 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 and secondly, if the amount has been drawn for more than 3-5 years, the same cannot be done. 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."

The said judgment, however, does not, as such, bar the State from correcting the anomaly which the employee had wrongly benefitted from. In the present cases, as noticed, the benefit of one additional increments was being given, to which the petitioner was not entitled to. In such circumstances, this Court is of the opinion that the recovery which has been effected at the time of retirement, could not have been done by the respondents in the manner it has been done, without even issuing any notice to the petitioner, at that point of time. Resultantly, the petition stands allowed. Recovery order dated 28.02.2014 (Annexure P7) is quashed. The amounts which have been recovered from the retiral benefits of the petitioner, shall be refunded to him along with interest of 7% per annum from the date they became due on his retirement, within 2 months, failing which, interest will be paid @ 9% per annum.

APRIL 11, 2016 **(G.S. SANDHAWALIA)**
sailesh **JUDGE**