

**1077 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.1819 of 2006 (O&M)

Date of decision : May 10, 2017

Sikander Singh

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. G.S. Ghuman, Advocate for the petitioner.

Mr. Manish Dadwal, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

The petitioner, who is an Ex. Armyman, was appointed as Armed Guard in Punjab National Bank, Branch Office-Gondwal, District Ludhiana on 01.02.1987. Vide order dated 01.07.1983 (Annexure P-4), his pay was fixed at ₹1050.54 and he continued to be paid salary on the basis of said fixation. The petitioner on attaining the age of superannuation and retired from service on 30.11.2005. However, before his retirement, he was issued a letter/show cause notice dated 27.06.2005 (Annexure P-5) as to why his pay salary be not re-fixed and as to why the recovery should not be made in 36 equal monthly installments. After his retirement, the petitioner through his counsel issued a legal notice dated 07.12.2005 (Annexure P-9) to the respondents for challenging the alleged move to re-fix the pay of the petitioner and thereafter, the petitioner filed the present petition for quashing the letter dated 27.06.2005 (Annexure P-5) and letter dated 12.12.1994 (Annexure P-8).

It comes out that after filing of the present petition in the year 2006, the same was admitted for hearing. However, no stay was granted by this Court. The respondents did not proceed further in the matter to refix the pay of the petitioner, rather from the written statement of respondent Nos.2 to 5, it comes out that they have kept ₹1,20,000/- under the Fixed Deposit A/c under Bank's lien on the assumption that on pay fixation, if the pay of the petitioner is reduced, the bank may be able to recover the same from the said Fixed Deposit. In the written statement, the respondent-bank had referred to many letters of the Government of India, apparently justifying the refixation of pay.

After hearing learned counsel for the parties, I am of the view that the present petition is pre-mature. In this case, no pay refixation is done so far. However, this Court has been informed that the retiral benefits of the petitioner were calculated on the basis of assumption of reduction in the salary by way of refixation.

I am also of the view that until an order of refixation of pay is passed, the retiral benefits cannot be calculated on the basis of assumption that the pay will be reduced. Without passing any order for approximate 12 years i.e. from the year 2005 to 2017, the respondents-bank is not justified in withholding the amount of ₹1,20,000/- in Fixed Deposit, assuming that on account of fact that the bank will refix the pay and the salary will be reduced. Even then, in view of the authority of Apex Court, delivered in case of ***“State of Punjab and others vs Rafiq Masih”, 2015(4) SCC 334***, no arrears can be recovered from his salary as there was no misrepresentation on the part of the petitioner when his salary was initially fixed in the year 1987 and sought to be refixed after 18 years in the year 2005.

In view of the matter, the present petition is partly disposed of as premature and partly allowed to the extent that ₹1,20,000/- kept under the Fixed Deposit A/c under Bank's lien along with interest shall be paid to the petitioner on the receipt of the order of this Court.

However, the respondents-bank shall be at liberty to pass the order regarding refixation of pay of the petitioner after giving him the opportunity of hearing and taking into consideration the law on the point and by passing a speaking order.

Needless to say that if the petitioner is adversely affected by the said speaking order, he is always at liberty to challenge the same before this Court.

(KULDIP SINGH)
JUDGE

May 10, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No