IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 229

Civil Writ Petition No.13668 of 2016 (O & M)
Date of Decision: *October 03, 2017*

Daljit Singh

..... PETITIONER

VERSUS

Punjab State Power Corporation Ltd. & others

..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. S.K. Rattan, Advocate, for the petitioner.

Mr. Rajat Khanna, Advocate, for the respondents.

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Jaspal Singh, J

1. By virtue of the instant writ petition preferred under Article 226/227 of the Constitution of India, petitioner for quashing impugned recovery order dated June 07, 2016 (Annexure P-7) issued by respondent No.4, vide which, an amount of ₹ 6,31,474/- is ordered to be deposited; to issue direction to the respondents not to effect any recovery and to refund the amount, if any, recovered from the petitioner; as well as grant pensionary benefits alongwith interest @ 12% per annum.

2. Petitioner retired on May 31, 2016 from the post of Additional Assistant Engineer. At the time of his retirement, neither any chargesheet nor any enquiry was pending against him. Petitioner, vide representation dated January 22, 2014, requested to opt Induction Leave Post

w.e.f. January 01, 1986 and to grant benefit as mentioned in Finance Circular No.18/2013 dated April 26, 2013. Petitioner served a legal notice dated September 23, 2015 upon the respondents however, no action was taken on his representation and legal notice. The petitioner filed CWP No.7469 of 2016 titled 'Daljit Singh vs. PSPCL' to implement aforesaid circular, which was decided vide judgment dated April 25, 2016 with directions to the respondents to decide legal notice dated September 23, 2015 within three months. Subsequently, without granting the benefit of Induction Post, impugned order dated June 07, 2016 has been passed by the respondents directing the petitioner to deposit an amount of ₹ 6,31,474/- so that further action can be taken to grant pension to the petitioner, without any notice or affording any opportunity of hearing to him.

3. As regard pensionary benefits, petitioner has placed on record copy of PPO dated March 28, 2017 (Annexure P-12), a perusal of which transpires that there is a considerable delay in making the payment of the aforesaid retiral benefits which cannot be attributed to the petitioner. Rather, delay appears to have occurred on account of omission or lapse on the part of the respondents. In ***Vijay L. Mehrotra vs. State of U.P., 2000(4) SCT 267***, the Hon'ble Apex Court, has observed that in case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter, if for some unforeseen reasons or circumstances, the payments could not be made on the date of retirement. Considering a number of cases and procedure to be adopted, the employer is obliged to release the pensionary benefits maximum within a period of three months from the date of retirement. In the case in hand, the benefits accrued on account of retirement have not been released to the petitioner within the aforesaid

reasonable period of three months rather, after a considerable delay and on that account he could not enjoy the fruits of the retiral benefits immediately on his retirement and was deprived of the said enjoyment that too, for no fault on his part. Thus, he deserves to be compensated by way of grant of interest on delayed payment(s).

4. As regards withholding/recovery of ₹ 6,31,474/-, it has been done without any show cause notice or without affording any opportunity of hearing to the petitioner. In **Rafiq Masih's case (supra)**, Hon'ble Apex Court held that though it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, recovery thereof by the employer would be impermissible in law.

5. Considering the facts and circumstances of the instant case, there is nothing on the record to suggest that there was any misrepresentation or fraud on the part of the petitioner. It was sheer mistake on the part of the respondents and the case of the petitioner stands squarely covered within the parameters laid down by the Hon'ble Apex Court in **Rafiq Masih's case (supra)**. Thus, the recovery of the amount of ₹ 6,31,474/- by the respondents vide order dated June 07, 2016 (Annexure P-7) is absolutely wrong and in violation of the settled law and the same is set aside.

6. As an upshot of the above said discussion, instant petition is disposed of with a direction to respondents to calculate and grant the interest @ 9% per annum on the delayed payment(s), after expiry of three months from the date of retirement till the actual payment(s) of the various dues, within a period of two months from the date of receipt of a certified copy of this order. Further, an amount of ₹ 6,31,474/- if already deducted, be

refunded/released within a period of two months, failing which, petitioner shall be entitled to interest @ 9% per annum. In case of non compliance of order, petitioner shall be at liberty to approach this Court.

7. During pendency of the petition, an application (CM No.6370 of 2017) has also been filed by the petitioner for issuing direction to the respondents to release the amount of gratuity payable to the petitioner which has been withheld as vide order dated July 05, 2016 (Annexure P-11), pay of the petitioner has been refixed and another recovery to the tune of ₹ 2,44,359/- has been calculated and ordered to be deposited.

8. However, the petitioner shall be at liberty to seek redressal of his other grievances including Gratuity and change of option regarding the benefit of 9/16 years scale by filing a separate petition.

(Jaspal Singh)
Judge

October 03, 2017
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No