

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1524-2015

Date of decision: 13.02.2017

Ravinder Mohan Kochhar

...Petitioner

Versus

Punjab State Power Corporation Ltd. & others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Padamkant Dwivedi, Advocate,
for the petitioner.

None for the respondents.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed seeking a writ or direction in the nature of certiorari to quash the impugned order dated 12.03.2014 (Annexure P-6) whereby the salary of the petitioner has been refixed and an amount of ₹ 1,11,932/- has been sought to be recovered.

2. It is contended that the petitioner herein retired on 30.04.2008 and by the impugned order dated 12.03.2014 the proficiency step up that had been granted to the petitioner by an order dated 30.10.1995 is sought to be withdrawn. Placing reliance upon a judgment rendered by the Hon'ble Supreme Court in *Civil Appeal No. 11527 of 2014* titled *State of Punjab and others vs. Rafiq Masih (Whitewasher) and others* and one rendered by Hon'ble Full Bench of this Court in *Budh Ram vs. State of Haryana and others, 2009(3) P.L.R. 511*, it is alleged that the impugned recovery cannot be effected from the petitioner. It is further argued that the impugned recovery is not on account of excess payment made to the petitioner on account of any fraud or misrepresentation. It is also argued that the

impugned notice has been served six years after the petitioner had retired and that too without any show cause notice.

3. Notice of motion was issued in the writ petition, however, no one is present to argue the matter today despite last opportunity having been granted by an order dated 26.10.2016.

4. I have heard learned counsel for the petitioner.

5. The law is well settled in this regard that no recoveries are to be effected from an employee after his retirement. In the instant case, the petitioner was made certain payments on account of proficiency step up which are now sought to be withdrawn. No recovery could be effected from retired employees, or recovery be made when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. The proficiency step up was given in the year 30.10.1995 and recoveries have been sought by the impugned order in 2014 when the petitioner had already retired. Reliance can be placed upon judgment rendered in *State of Punjab and others vs. Rafiq Masih (Whitewasher) and others* case (supra) the Hon'ble Supreme Court held 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.”*

6. Therefore, the impugned order dated 12.03.2014 (Annexure P-6) is hereby set aside and it is directed that any recovery that has been made should be refunded within a period of two months along with 6% per annum interest failing which the amount to be refunded will carry an interest @ 9% per annum from the date it was withdrawn till the date it is refunded. As regards the refixation of pay, the question is left open and not deliberated upon in the instant petition. Any withdrawal of benefit has to be only after a due show cause notice is given to the petitioner and he is given adequate opportunity to represent himself.

7. In view of the above, the writ petition is allowed in the aforesaid terms.

13.02.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.