

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.18644 of 2016
DECIDED ON: OCTOBER 03, 2017

RAJ KUMAR

.....PETITIONER.

VERSUS

PUNJAB STATE POWER CORP. LTD,
PATIALA AND OTHERS

.....RESPONDENTS.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Aditya Dassaur, Advocate,
for the petitioner.

None for the respondents.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of certiorari thereby quashing the gratuity pay order (Annexure P-8) whereby recovery of Rs.1,67,873/- has been made from the pensionary benefits of petitioner.

2. Unchallenged and un-controverted facts are that the petitioner started his carrier as work charge employee with respondent No.1, subsequently his services were regularised on 30.03.1979, and after regularization of his service, he was promoted as Assistant Lineman and Lineman. On 31.03.2015, on attaining the age of superannuation, he stood retired. During his service, the

petitioner was granted 9th and 16th year pay scales in the year 1988 and 1995, respectively, which were subsequently withdrawn and fresh orders were issued whereby the said pay scales were made applicable w.e.f. 1989 and 1996, respectively. On account of re-fixation of pay scales, the respondents issued recovery orders to the tune of Rs.1,67,873/- and succeeded in deducting the said amount from the retiral dues of the petitioner.

3. While challenging the illegality of the recovery orders, petitioner approached this Court by way of instant petition. Though, earlier in response to the notice of motion, Ms. Meena Bansal and Ms. Neeru Thakur, Advocate for Mr. Vikas Chatrath, Advocate put in appearance on behalf of respondents No. 1 to 4 but subsequently they slipped away from the proceedings and did not opt to appear. The simple question which requires determination in this case is whether the action of the respondents in effecting the recovery of Rs.1,67,873/- is legal and the respondents were empowered to effect that recovery and answer to this question is in the negative particularly, in the light of judgment passed by Hon'ble Apex Court in "***State of Punjab and ors. etc. vs. Rafiq Masih (white washer) & ors., 2015 AIR (SC) 696; 2015 (1) S.C.T. 195***" as well as subsequent Instructions ***No.4/118/09-1FPPC/575043/1 dated August 28, 2015*** issued by State of Punjab in pursuance of ***Rafiq Masih's*** case (supra), which have been duly adopted by Punjab State Corporation. The recovery of the aforesaid amount of Rs.1,67,873/- has been effected simply on the ground that petitioner is not entitled to ACP scales on completion of 9th and 16th years from the date when it was originally granted in the years 1988 and 1995 and subsequently, he was held to be entitled for the same w.e.f. the years 1989 and 1996. There is no

fraud or misrepresentation etc. on the part of the petitioner and it was purely on the basis of wrong interpretation of the rules or the service record on account of which excess payment was made to the petitioner by the respondent-department.

4. In view of the settled proposition of law particularly ***Rafiq Masih's*** case (supra) and instructions issued in pursuance thereof, respondents are not within their right to recover the said amount. Rather, the petitioner is entitled to the refund thereof. Accordingly, instant petition is allowed and the respondents are directed to refund/repay the amount of Rs.1,67,873/- within a period of two months from the date of receipt of certified copy of this order. In case, of non-compliance of aforesaid directions, the respondents shall be liable to pay interest @ 9% per annum to the petitioner from the date of filing of instant petition till its actual payment.

OCTOBER 03, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned ***Yes***

Whether reportable ***Yes/No***