

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.24420 of 2015 (O&M)

Date of Decision: 06.04.2017

Balram Kumar Sharma

...Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. B.S. Mittal, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

The petitioner herein is aggrieved against the order dated 20.10.2015 passed by respondent No.4, wherein, it has been proposed to recover a sum of Rs.2,85,946/- from the salary of the petitioner by deducting Rs.15,000/- per month.

In brief, the facts are that the petitioner was appointed as Work Charge T-Mate on 09.01.1978 and was promoted as Work Charge Painter on 17.07.1986 and thereafter, he was posted as Work Charge Fitter on 24.03.1988 and subsequently promoted as Work Charge Foreman on 06.03.1999. The services of the petitioner were regularized by order dated 18.05.2005 in the same pay scale and he was designated as Regular

Foreman (Workman). The petitioner's pay had been fixed in the scale of Rs.10900-34800+4500 grade pay, but by impugned order dated 20.10.2015, it was held that the pay scale of the petitioner would be Rs.6400-20200+3200 grade pay and on the basis of re-fixing of his pay, a recovery was sought.

Learned counsel for the petitioner urges that the impugned order dated 20.10.2015 was issued without any show cause notice or any opportunity of hearing being granted to the petitioner, therefore, it was against the canons of rules of natural justice. It is contended that the pay scale had already been fixed as per circular No.19 dated 02.01.2013 and without affording any opportunity of hearing, the said scale could not be altered. It is also argued that the recovery was not justified, in view of the ratio as laid down by the Apex Court in the case of ***“State of Punjab and others vs. Rafiq Masih (White Washer) and others”***, 2015(1) RSJ 177.

Per contra, learned counsel appearing on behalf of the respondents-State contends that the writ petition is not maintainable and the petitioner is not entitled to the pay scale of Rs.10900-34800+4500 grade pay. It is contended that the wrong pay scale had been given to the petitioner, therefore, it became necessary to re-fix his pay scale and recover the excess amount.

I have heard learned counsel for the parties and have also perused the record of the case.

Admittedly, there was no notice issued to the petitioner before passing the impugned order and re-fixing of the pay scale. It is well settled that if any adverse orders have to be passed, due opportunity of hearing

should be afforded to the person, who is likely to be effected and in this case by re-fixing the pay scale of the petitioner, he would be put to a great monetary distort. Therefore, the impugned order passed, in the absence of giving fair opportunity of hearing, is not sustainable.

As far as, recovery of Rs.2,85,946/- is concerned, the Apex Court in the case of ***“State of Punjab and others vs. Rafiq Masih (White Washer) and others” (supra)*** has held in the case of employees belonging to Class III and Class IV service or Group C and Group D service, recoveries would be impermissible in law. In para 12 of the judgment, the Apex Court has summarized some of the situations, wherein, recoveries by the employers would be impermissible in law, which is 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.”

In the instant case, the pay of the petitioner was fixed by the respondents-Department itself and no fraud or misrepresentation could be attributed to the petitioner in the pay scale that was given to him. In view of the law laid down by the Apex Court in ***“State of Punjab and others vs. Rafiq Masih (White Washer) and others” (supra)***, since the petitioner belonging to Class-III service (Group C service), recoveries by the respondents-Department is clearly impermissible in law.

In view of the above discussion, the impugned order 20.10.2015 passed by respondent No.4 is hereby set aside. However, the respondents-Department is at liberty to re-fix the pay scale of the petitioner, after giving him a show cause notice and fair opportunity of hearing.

The writ petition stands allowed accordingly.

April 06, 2017

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No