

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

CWP No.25620 of 2015 (O&M)
Date of Decision: January 17, 2017

Kamla Setya @ Kamla Bhatia

...Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Harnaik Singh, Advocate
for the petitioner.

Mr. Vishal Gupta, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed to challenge the order dated 12.11.2014 (Annexure P-10) vide which the salary of the petitioner was refixed, as well as order dated 19.01.2015 (Annexure P-11) whereby, a sum of Rs.4,36,320/- is sought to be recovered from the gratuity of the petitioner.

In brief, the facts are that the petitioner joined the service of Punjab State Electricity Board as Lower Division Clerk in the year 1977. In the year 1980, she gave birth to a mentally retarded deaf and dumb child with 100% disability. On account of 100% disability of her young child, the

petitioner applied for leave for treatment on 01.10.1984 and remained on leave till 16.05.1989 due to her family circumstances. The leave taken by the petitioner for over five years was regularized by the respondents herein by treating the same as extraordinary leave. Vide order dated 19.11.2001 (Annexure P-9), she was given pay scale of 1200-2100 for the post of Senior Clerk w.e.f. 17.05.1989. She was then granted pay scale of 1500-2640 for the post of Junior Assistant w.e.f. 01.01.1994. The petitioner herein retired on 13.05.2014 on attaining the age of superannuation as a Upper Division Clerk. After her retirement, the pay scale of Rs.1500-2640 granted to her for the post of Junior Assistant was withdrawn and the salary of the petitioner was refixed. Subsequent to the refixing of the salary, the respondents herein sought to recover a sum of Rs.4,36,320/- on account of excess payment made to her vide the impugned order dated 19.01.2015. Aggrieved against the action of the respondents seeking to recover the said amount as well as refixing the salary without any show cause notice, the instant petition has been filed.

Mr. Harnaik Singh, Advocate, appearing on behalf of the petitioner argues that the amount so sought to be recovered is wholly unsustainable. It is also argued that the impugned order dated 12.11.2014 vide which scale of Junior Assistant of Rs.1500-2640 given w.e.f. 01.01.1994 has been cancelled without taking into consideration that the non-duty period had been regularized. It is further argued that the recovery of a sum of Rs.4,36,320/- from the gratuity of the petitioner is sustainable, in view of the judgment rendered in '*State of Punjab and others vs. Rafiq Masih and others*', 2015 (4) SCC 334 in which it has been held that after

retirement no recoveries can be made.

Per contra, Mr. Vishal Gupta, Advocate, for the respondents submits that the recovery sought on account of the fact that the petitioner remained absent from duty for more than a period of 1689 days from 1.10.1984 to 16.05.1989 and for a period of 690 days from 05.08.1994 to 24.06.1996 and the period of extraordinary leave cannot be counted towards the period of regular service as per rules and regulations framed by the department. It is argued that the petitioner is not entitled to the scale that was given to her w.e.f. 01.01.1994 and she would in fact be entitled to the same from 17.08.1998, on which date, she returned from her leave. It is further argued that the scale of Junior Assistant granted to the petitioner was withdrawn by treating the period when she was absent from duty as non-duty period and therefore, the recovery of the excess amount given to her is wholly justified.

I have heard learned counsel for the parties and with their assistance have perused the record of the case.

There is no dispute with the fact that the petitioner remained absent for a period from 1.10.1984 to 16.05.1989 and then from 05.08.1994 to 24.06.1996. As per the Finance Circular No.03 of 1989 dated 05.01.1989, it is specified that the period spent on duty shall include all kind of leave except extraordinary leave for the purposes of calculation of earned leave. Meaning thereby, that the period of extraordinary leave will not be counted towards regular service. The petitioner herein had remained absent for a considerable length of time and it was on this count that the respondents decided to withdraw the scale of Junior Assistant as given to

her.

Learned counsel for the respondents has relied upon a judgment rendered in '*State of Punjab vs. Dr. P.L. Singla*', 2008(3) SCT 742, to buttress his arguments that the absence from duty by an employee would not entitle the said employee to any benefits. The said judgment, as relied upon, is not applicable to the facts of the instant case, insofar as, the employee of the case referred to above was challenging the punishment that was awarded to him on account of non-joining duty in time. In the case referred to above '*State of Punjab vs. Dr. P.L. Singla*' (*supra*) the petitioner had challenged the imposition of penalty of stoppage of five increments despite the fact that extraordinary leave for the period of absence was treated as extraordinary leave. In the case in hand, the salary has been refixed by noting the fact that the petitioner rejoined back in service on 17.08.1998 instead of 01.01.1994, the date when she had been given scale of Junior Assistant. However, the petitioner has already made a representation in this regard, which is yet to be decided and leaving the question open, she is at liberty to re-agitate the issue with the respondents.

However, since the petitioner has already retired, alleged recovery as sought to be made from gratuity after retirement is not permissible in view of the judgment rendered in the case of '*State of Punjab and others vs. Rafiq Masih and others*' (*supra*). In '*State of Punjab and others vs. Rafiq Masih and others*' (*supra*) the question before the Apex Court was whether recoveries could be effected from an employee on account of monetary benefit given, which they were not entitled to. The Apex Court while noticing several judgments came to conclude 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, summarize 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.”

As per the judgment rendered in the case of '***State of Punjab and others vs. Rafiq Masih' (supra)*** the Hon'ble Supreme Court has clearly held that recovery will be impermissible if the same is sought to be made after retirement. In the instant case, the petitioner retired from the services

on attaining the age of superannuation on 31.05.2014, whereas, the impugned order, refixing the salary of the petitioner has been passed on 12.11.2014 and a sum of Rs.4,36,320/- has been recovered from the gratuity of the petitioner vide order dated 19.01.2015.

Therefore, it is held that recoveries as sought to be made from the petitioner herein are impermissible in law, however, if the petitioner is still aggrieved against the refixing of the pay, she is at liberty to approach the department and agitate the same.

In view of the above, the impugned recovery order being wholly illegal and arbitrary is set aside. In case recoveries have been made, the respondents herein are directed to disburse the amount of Rs.4,36,320/- as deducted from the gratuity of the petitioner with interest @ 6% per annum within a period of three months from the date of receipt of certified copy of this order. In the case, the needful is not done within the above stipulated period, then the respondents shall be liable to pay the above-said amount @ 9% per annum from the due date, till the realization of the same. It is, however, made clear that the petitioner, in case so arises, is at liberty to agitate the issue of refixing of her salary with the respondents.

The petition stands allowed in the above terms accordingly.

January 17, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No