

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

CWP No. 336 of 2016 (O&M)

Date of Decision: 15.05.2017

TILAK RAJ

... Petitioner

V/s.

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Pankaj Sharma, Advocate,
for the petitioner.

Ms. Avin Sandhu, Advocate,
for Mr. Amit Aggarwal, Advocate,
for the respondents.

KULDIP SINGH, J. (Oral)

The petitioner has invoked the writ petition under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari for setting aside the order dated 04.11.2014 (*Annexure P-6*) passed by the respondent No. 2 vide which a sum of ₹1,32,076/- has been ordered to be recovered from the leave encashment of the petitioner.

Brief facts of this case are that initially petitioner was appointed as T-mate in the Electricity Wing of Municipal Corporation, Amritsar on 31.05.1979. Later on, he was promoted as Assistant Lineman in the year 1994. The Municipal Corporation, Amritsar vide resolution No. 7/36 dated 08.06.1993 granted 9 and 16 years time bound scales to its employees. The Electricity Wing of Municipal Corporation, Amritsar was taken over by the Punjab State Electricity Board (P.S.E.B.) vide office order dated 24.04.1996 (*Annexure P-2*) subject to certain terms and conditions as contained therein.

Out of these conditions, first three conditions, which are relevant for the purpose of resorting of the present controversy, are reproduced as under: -

1. *“All M.C. personnel should be equated with reference to their functions, responsibilities, pay scales etc. to the specified cadres in the Board. Where there is no doubt regarding equation, M.C. personnel should be integrated with the Board cadre on the basis of their length of service in the present rank provided the said personnel possess the requisite qualifications/experience prescribed for the equivalent posts in PSEB.*
2. *The integration will be as on 1st April, 1995.*
3. *Case will be taken that in any case the promotion prospects will not be less than what they were having in the Municipal Corporation and in case of such an eventuality, posts will be upgraded on personal basis by PSEB where Municipal employees would have been eligible for promotion under their rules earlier than integrated seniority.”*

The petitioner retired as Assistant Lineman on 30.06.2014. Thereafter, impugned order dated 04.11.2014 (*Annexure P-2*) has been passed whereby his pay has been re-fixed after adjusting promotional benefit granted to him as Assistant Lineman and proficiency step up as regular T-mate in the year 1986 and recovery of ₹ 1,32,076/- has also been ordered to be effected. The said order has been passed on the basis of the Finance Circular No. 05/2013.

In the written statement, respondents No. 1 to 4 have taken the stand that first and second time-bound promotional scale was granted to the petitioner considering him as regular T-mate as induction post. However, the employees who were appointed as regular T-mate and who opted for the post

of Assistant Lineman as induction post, the same promotional benefits were not to be granted. The petitioner had opted for the post of Assistant Lineman as induction post, therefore, his services as T-mate was to be ignored. On the scrutiny of the service record, it was found that the petitioner was awarded one increment when he was promoted from the regular T-mate in the year 1994 to the post of Assistant Lineman. The same has now been reviewed vide Finance Circular No. 5/2013 applicable w.e.f. 01.01.1986. Additionally, proficiency step up awarded to the petitioner while working as regular T-mate has been adjusted in the 9 years time bound promotional scale granted to him as Assistant Lineman and therefore, the recovery has been justified.

I have heard the learned counsel for both the parties and have carefully gone through the case file.

It comes out that service of the petitioner was taken over by the P.S.E.B. vide order dated 24.04.1996 (*Annexure P-3*) with certain conditions. As per the said terms and conditions, it was laid down that the promotional prospects shall not be less than what he was having in Municipal Corporation, Amritsar. The promotional scales were given to the petitioner by the Municipal Corporation, Amritsar. Finance Circular 05/2013 was issued when the services of the petitioner were already taken over by the P.S.E.B. and the petitioner was at the fag-end of his service.

Now, question would arise whether the service benefits granted to the petitioner in Municipal Corporation, Amritsar can be withdrawn and that too after his retirement i.e. 30.06.2014 by passing the order dated 04.11.2014 (*Annexure P-6*).

I am of the view that the benefits already granted to the petitioner by the earlier employer cannot be withdrawn after the retirement of the petitioner on account of passing of Finance Circular No. 05/2013. Moreover, no undertaking was given by the petitioner to the effect that he will surrender the service benefits already availed by him while in service with Municipal Corporation, Amritsar. Even if, the petitioner opted for post of Assistant Lineman as induction post in PSEB, his previous service as regular T-mate in Municipal Corporation, Amritsar cannot be ignored on account of his service in the Municipal Corporation, Amritsar being taken over by the PSEB. Moreover, after the retirement in view of the authority of **State of Punjab Vs. Rafiq Masih (White Washer), (2014) 8 SCC 883**, recovery cannot be effected from the petitioner.

As such, present petition is allowed and the impugned order dated 04.11.2014 (*Annexure P-6*) is hereby quashed. The recovery of an amount of ₹1,32,076/- that has already been made from the leave encashment of the petitioner, be released to him alongwith interest @ 9% per annum from the date of recovery till the date of actual payment.

May 15, 2017

Suresh Kumar

**(KULDIP SINGH)
JUDGE**

<i>Whether speaking / reasoned</i>	:	Yes	/	No
				✓
<i>Whether Reportable</i>	:	Yes	/	No