

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

CWP-7709-2015

Date of Decision: 24.11.2017

Sukhbir Singh

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and another Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.K.L.Dhingra, Advocate,
 for the petitioner.

Mr.R.S.Longia, Advocate,
 for the respondents.

AMOL RATTAN SINGH, J. (Oral)

The petitioner, by this petition seeks that excess payments stated to have been made to him by the respondents be not recovered, notice for such recovery having been issued to him vide the impugned notice, Annexure P4 dated 22.12.2014, vide which an amount of Rs.1,24,260.00 was sought to be recovered.

The petitioner having approached this Court by way of the present writ petition, the respondents are shown to have issued a substituted notice on 09.03.2017, a copy of which is on record as Annexure P8, vide which the dues recoverable from the petitioner are stated to be Rs.43,114.00 and not Rs.1,24,260.00, as was the case in the previous notice.

Mr. Longia, learned Counsel for the respondents, has produced in Court a letter/undertaking of the petitioner, dated 02.11.2016, addressed to the CAO (Pay & A/Cs) UHBVNL, Panchkula, that reads as under:

“To

The CAO (Pay & A/Cs)
UHBVNL, Panckula.

Subject: Request application for drawl of increment on promotion as CA.

With due request, I have submit an application for drawl of increment on promotion as CA on dt. 30-3-2010 for being higher responsibility under rule 4.4(c). It is also added that if the case may be settled, as above then I will withdrawn my court case in Hon’ble High Court Chandigarh No.CWP-7709 dt. 2015.”

Thus the contention of learned counsel for the respondents is that the petitioner having undertaking even after filing this writ petition, that if the matter is settled, he would withdraw his Court case (this writ petition).

Having considered the aforesaid contention, it is seen that no ‘one time settlement’ is seen to be executed by the petitioner, agreeing that instead of Rs.1,24,260/- only Rs.43,114/- may be recovered from him. Hence, the contention of the learned counsel for the respondents is rejected, in the light of the judgment of the Supreme Court in ‘**State of Pujab and others etc vs. Rafiq Masih (White Washer) etc.,**’ (Civil Appeal No.11527 of 2014), as also in terms of the instructions of the Addl.Chief Secretary to Government

of Haryana, Finance Department, Haryana, dated 23.02.2016, a copy of which has been produced in Court and is taken on record as Annexure P10, wherein, the following conditions have been laid down:

“Now, in the Civil Appeal No.11527 of 2014 State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc., Hon’ble Supreme Court of India has decided that the recovery of excess amount cannot be made in the following cases:-

(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.”

Obviously, the petitioner being a Group-C employee and having been made the payment in question the year 2006, neither of the two recovery notices, i.e. Annexure P4 and Annexure P8, would be sustainable, in view of what is stipulated in Clause (i) of the aforesaid instructions.

Very often it may be the case that such an employee in connivance with a fellow employee in the Accounts/Establishments Branch, may get paid an excess amount knowing fully well that it would not be recovered from him.

However, to prove that, proper enquiry proceedings would naturally have to be undertaken by the State to show any such connivance. No such procedure has been adopted by the State in the present petition and consequently, in the light of the instructions of the State Government itself, not denied to be applicable to the respondent-Corporation/Nigam, this petition is allowed and the impugned notice Annexure P-4 and the substituted notice issued thereafter, Annexure P-8, are hereby quashed.

November 24, 2017

dharamvir

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO