

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CWP No. 7819 of 2015
DECIDED ON: AUGUST 31, 2017

SATISH CHANDER

.....PETITIONER

VERSUS

PUNJAB STATE TRANSMISSION CORPORATION LTD. & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. J.S. Jaidka, Advocate
 for the petitioner.

 Mr. Vishal Chaudhri, Advocate
 for the respondents.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought a writ in the nature of certiorari to quash the order dated May 07, 2014 (P-1) passed by respondent No.3 whereby, the date of grant of 16 years ACP scale was refixed with further prayer for issuance of a writ in the nature of mandamus directing the respondents not to affect any recovery from the retiral benefits of the petitioner in pursuance of afore-said impugned order and to reimburse the amount so recovered from the petitioner.

2. Undisputably, petitioner stood retired from the respondent-Corporation as LDC on February 20, 2014. Subsequent to his retirement, the

date granting the 16 years ACP scale to the petitioner was changed from September 08, 2005 to March 01, 2006 and ordered the recovery of amount so paid on account of grant of 16 years ACP during the period of September 08, 2005 to March 01, 2006 to the tune of ₹93,854/-.

3. The contention of learned counsel for the petitioner is that the petitioner was rightly granted the ACP scale on completion of 16 years second time bound promotional scale w.e.f. September 08, 2005, which was subsequently, withdrawn and made applicable w.e.f. March 01, 2006. In the alternative, it has been pleaded by learned counsel for the petitioner that if this Court comes to the conclusion that the petitioner did not deserve the ACP scale w.e.f. September 08, 2005 then the recovery of the amount in question, which was wrongly paid to the petitioner towards annual increments and other financial benefits cannot be affected from the petitioner in view of judgment rendered by Hon'ble Apex Court in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others; 2015 (1) RSJ 177.**

4. Petitioner was initially granted the benefit of ACP scale on completion of 16 years service w.e.f. September 08, 2005, as he joined the department as LDC on September 08, 1989 but it was not permissible w.e.f. September 08, 2005 as he did not qualify the required type test. The exemption, if any of the type test was granted to the officials who had attained the age of 50 years or more. So, immediately when the petitioner attained the age of 50 years, he was entitled to the ACP scale on completion of 16 years of service and as such he was granted the said scale w.e.f. March 01, 2006. Though, some extra amount has been paid towards annual increment and other financial benefits, to the petitioner while granting him ACP scale on completion of 16 years of

service w.e.f. September 08, 2005. Yet the respondents are not within their jurisdiction to recover the amount so paid to the petitioner in view of the dictum laid down by Hon'ble Apex Court in **Rafiq Masih's case** (supra). As per the observations made in the afore-said judgment, no recovery can be affected, especially in the circumstances that there was no fraud or misrepresentation etc. on the part of petitioner.

5. During the course of arguments, it was also urged by learned counsel for the respondents that the petitioner gave an undertaking (Annexure P-8) but there is no discussion in the afore-said judgment with regard to such undertaking but it has been categorically observed that no recovery of any amount which has been paid on account of some inadvertence or wrong committed by the department, especially when there is no fraud or misrepresentation etc. can be affected from the employees or retirees belonging to Class III and IV or the employees who are due to retire within one year. The fact of no such undertaking has not been discussed in the afore-said judgment.

6. In view of afore-said discussion, instant petition is allowed. However, respondent No.3 is directed to refund the amount so deducted from the petitioner in pursuance of impugned order dated May 07, 2014 (P-1) within three months from the date of receipt of certified copy of this order. In case of non-compliance, it would carry interest @9% from the date of passing of this order.

AUGUST 31, 2017

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Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(JASPAL SINGH)
JUDGE