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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19677-2016

Date of Decision : October 25 , 2018

Kewal Singh Parmar

.... Petitioner.

Versus

The Secretary, Punjab State Power Corporation Ltd.(PSPCL)
and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Om Pal Sharma, Advocate
for the petitioner.

Mr. Ashu Kaushik, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash revised Pension Pay Order dated 14.7.2016 (Annexure P/3) and revised Gratuity Pay Order dated 14.07.2016 (Annexure P/4) to the extent that the respondents have initiated the process of recovery of the amount which was paid on account of grant of higher pay scale as well as that of gratuity w.e.f. 1.1.1996 onwards from the petitioner, who retired on 28.2.1995 on attaining the age of superannuation.

2. As per the petitioner, he joined the respondent-department on

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11.2.1956 and was promoted to different posts. The petitioner retired from service on 28.2.1995 as Assistant Executive Engineer.

3. In an earlier round of litigation, the petitioner alongwith others had sought that they were held entitled to grant of benefit of time bound next higher scale after 9 and 16 years of service at par with the persons, who were recruited by way of direct recruitment and to that effect, CWP No. 9673 of 1994 titled **D.L.Sud and others Vs. P.S.E.B.** Was decided on **02.07.2004** (Annexure P/1). The said judgment was challenged by way of LPA No. 244 of 2004 before this Court and the same was disposed of as per decision taken by Hon`ble Apex Court in Civil Appeal No. 3439 of 2007, decided on 19.8.2010. Meanwhile, the respondent-department had made payment to the petitioner alongwith others in compliance of the orders dated 2.7.2004 (Annexure P/1) passed by this Court. Similar matters pertaining to P.S.E.B. and Bhakhra Beas Management Board (BBMB) were pending before this Court in LPA No.244 of 2004 and the same was decided on 01.02.2012 in the light of judgment from Hon`ble Supreme Court.

4. As per the petitioner, the benefits were given to them in compliance of order, Annexure P/1, passed by this Court on 2.7.2004 against some undertaking. The petitioner retired on 28.2.1995 on attaining the age of superannuation. Now, the respondent-department has started the process of recovery and the same recovery cannot be effected from the petitioner. The said amount was not paid to the petitioner by way of any mis-representation or fraud by the petitioner and as such, the same cannot

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be recovered. Revised Pension Pay Order and Gratuity Order, Annexures P/3 and P/4 have been issued for effecting recovery from the petitioner, but no calculations were given to the petitioner as to how much amount is to be recovered from him. As such, the present writ petition before this Court.

5. In the reply, the respondents have taken a plea that the order dated 23.04.1990 issued by the respondent-department is applicable only for directly recruited Assistant Engineers/Assistant Executive Engineers and possess the requisite qualification for appointment to the higher post and not for promotes as in the case of the petitioner. Although, the petitioner was allowed the benefit of 9/16 years regular service as AE/AEE in compliance of the orders passed by this Court yet the same was cancelled vide order dated 9.7.2015 on the basis of decision of Hon`ble Apex Court dated 22.9.2014 passed in SLP No. 34209 of 2012 arising out of final judgment dated 1.2.2012 passed in LPA No. 244 of 2004. As per interim order dated 22.9.2006 passed in the present case, recovery in pursuance of the impugned orders have been stayed.

6. While replying on merits, the respondents took similar pleas that the petitioner got the benefit of higher scale as per the decision dated 2.7.2004 of this Court . The petitioner stood retired from service on 28.2.1995. As per decision of Hon`ble Apex Court and as per Division Bench judgment in the LPA, the benefit already granted to the petitioner was cancelled and the process of recovery from the petitioner was initiated on 14.07.2016 after rejection of the representation having been made by the petitioner. The respondents initiated the action for recovery of the

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amount, which was wrongly paid against the public policy and against the interest of Board/Corporation. More so, the petitioner had already given in writing that in the event of any recovery, if ordered, the same may be effected from his pension accordingly. As such, there is no illegality or violation done by the respondents in effecting the recovery, especially when the recovery is being effected on the basis of decision of Hon`ble Apex Court in the above referred cases and decision of Hon`ble Division Bench of this Court in LPA No. 244 of 2004.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the matter in controversy revolves around the issue – Whether recovery could be effected from the petitioner on the basis of orders, Annexure P/3 and P/4 whereby revised Pension Pay Order and revised Gratuity Orders were issued after superannuation of the petitioner.

8. It has rightly been contended by learned counsel for the petitioner that the payment was released to the petitioner by the respondent-department as per the Court's orders and not on the basis of any mis-representation or fraud having been played by the petitioner. The undertaking given by the petitioner for release of the amount was in terms of the orders passed by this Court.

9. In **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177**, while dealing with the issue of recovery, Hon`ble Apex Court summarized the following few situations, wherein recoveries by the employers, would be impermissible in law:-

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- “(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 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 for outweigh the equitable balance of the employer's right to recover.”

10. More so, Hon`ble Apex Court in **Bhakra Beas Management Board Vs. Krishan Kumar Vij & Anr. 2010 AIR (SC) 3342**, observed as under:-

“40 . It is not in dispute that all the respondents of various appeals have since demitted the office on attaining the age of superannuation. While they were in service, may be on account of orders of the High Court, to save itself from being hauled up for committing contempt of court, Board has made payments to them towards arrears etc. After such a long lapse of time, more so, when the respondents have already retired, it will be harsh on our part to direct recovery thereof. Thus, we direct that the amounts already paid to the respondents would not be recovered by the Board.”

11. In view of the matter in controversy involved and undisputed facts that the payment was released to the petitioner as per Court's order and not on the basis of mis-representation or fraud having been played by the petitioner, such a recovery cannot be effected after such a long gap as

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the petitioner had already superannuated on 28.02.1995 and the payments were released to him as per the Court's order.

12. In view of the above, the present writ petition is accepted and the impugned revised Pension Pay Order dated 14.7.2016 (Annexure P/3) and revised Gratuity Pay Order dated 14.07.2016 (Annexure P/4) to the extent of recovery are quashed.

13. The writ petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

October 25, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes