

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

(226)

CWP-7621-2016

Date of Decision: November 19, 2018

Satbir Singh (now deceased) through LRs

..Petitioner

Versus

UHBVN and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Sunil Kumar Sharma, Advocate, for the respondents.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the challenge is to the order dated 06.04.2016 (Annexure P-15) by which a sum of Rs.12,37,610/- was sought to be recovered. The said recovery was sought to be made on the ground of refixation of pay of Sh. Satbir Singh from 01.01.1992. The case which has been set out in the present writ petition, is that the petitioner was appointed as a Class IV employee with the respondent-Haryana State Electricity Board (now known as Uttar Haryana Bijli Vidyut Nigam) on 03.07.1984. In January, 1992, the petitioner was promoted as Lower Divisional Clerk. From the post of Lower Divisional Clerk, the petitioner retired on 31.01.2016.

After the retirement of the petitioner, the respondent refixed his salary vide order dated 06.04.2016 (Annexure P-15) with effect from 01.01.1992. By refixing the salary, the respondent sought to recover Rs.12,37,610/- from the petitioner. The said order has been challenged by the petitioner in the present writ petition. Grounds given by the petitioner to

challenge the said order is that it is the respondent who had fixed the salary of the petitioner and no objection whatsoever in respect of fixation of the same was taken during the service career of the petitioner and after the retirement of the petitioner, the respondents on their own without any show cause notice refixed the salary with retrospective effect and calculated recovery of Rs.12,37,610/-, which is arbitrary and illegal as the said order has been passed without observing the rules of natural justice. No show cause notice whatsoever was given to the petitioner, who had already retired by the said date.

It has been further contended by counsel for the petitioner that in view of law laid down by the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih, 2015 (1) SCT 195**, no recovery can be effected from Class III and IV employees who have already retired, in case there is no misrepresentation from the employees. In the reply filed, nothing has been pointed out as to whether there was any misrepresentation on behalf of the petitioner when his salary was fixed in the year 1992. Further, it has been admitted that no show cause notice whatsoever was given before refixing the salary of the petitioner.

In view of the above, it is clear that order dated 06.04.2016 (Annexure P-15) is not only passed without observing the rules of natural justice but also without taking into consideration the settled law as settled by the Apex Court in **State of Punjab Vs. Rafiq Masih, 2015 (1) SCT 195** that no recovery has to be effected from Class III and IV employees after their retirement. Annexure P-15 is therefore set aside.

Further, it has been pointed out that after the petitioner retired,

no pensionary benefits were released to him due to the pendency of the present writ petition. Even though the order Annexure P-15 was stayed by this Court, there was no justification with the respondents to withhold the pensionary benefits. Unfortunately, the petitioner and his wife also expired during the pendency of the writ petition and could not enjoy the fruit of the service which the deceased petitioner had rendered, which is unfortunate. Two daughters of the petitioner who are the legal heirs have been impleaded as the petitioners after the death of the petitioner Satbir Singh (deceased). As there is no impediment in release of the pensionary benefits to the legal heirs of petitioner Satbir Singh, the respondents are directed to release the same forthwith within a period of 2 months. The legal heirs of the deceased petitioner will also be entitled for the interest on the said payment @ 9% per annum.

The writ petition is allowed.

Counsel for the respondents states that the details of the legal heirs be given to the department to make the payment.

Counsel for the petitioner, at this stage, states that the details of the legal heirs has already been given when they were impleaded before this Court and the copy of the same was supplied to counsel for the respondents.

November 19, 2018
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No