

Sr. No.219

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

CWP No. 14503 of 2016 (O&M)

Date of Decision: 28.08.2019

Ravail Singh

... Petitioner

Versus

Punjab State Power Corporation Limited The Mall, Patiala and
others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.S.Bajaj, Advocate,
for the petitioner.

Ms. Promila Nain, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

The petitioner herein, *inter alia*, seeks quashing of order dated 27.05.2016 (Annexure P-1) vide which recovery of Rs.2,01,658/- has been sought in the monthly installments of Rs.10,000/-, from the salary of the petitioner. It is claimed that on account of wrong fixation of pay at the time of joining as Regular T-Mate on 29.05.1996, excess amount was paid to the petitioner. It is the case of the petitioner that recovery has been sought after almost lapse of two decades, which is not sustainable particularly in view of the fact that there was no misrepresentation on his part and he was not heard before imposing the impugned recovery.

2. In the return, respondents justified their action of imposing recovery upon the petitioner. It is their stand that when

the petitioner was promoted as Regular T Mate on 29.05.1996 his pay was wrongly fixed as Rs.3,150/- instead of Rs.3,040/- and benefit of an additional increment was accorded to him. This error came into light at the time of audit of accounts and after due calculations, the recovery order was rightly passed.

3. Having heard learned counsel for the parties, I am of the view that case of the petitioner is squarely covered by the ratio as enunciated by the Apex Court in case ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015 (4) SCC 334.***

Relevant part thereof is extracted hereinbelow:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- 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.”

4. In view of the above, writ petition is allowed in terms thereof and the impugned recovery order dated 27.05.2016 (Annexure P-1), which is stated to have been issued after 20 years on the ostensible ground that pay of the petitioner was anomalously fixed while he was working as Regular T Mate which is a Class-IV post though later on he was promoted to Class-III post. Either way up to Class-III and IV, case of the petitioner is covered by Rafiq Masih, *ibid*.

5. I do not find any merit in the contentions of learned counsel for the respondents that the impugned order was passed to correct the pay anomaly in view of audit objection during the routine audit conducted by the auditors of respondent-Corporation i.e. PSPCL.

6. Impugned order dated 27.05.2016 (Annexure P-1) is, accordingly, set aside and petitioner be granted all consequential benefits.

7. Any recovery which has been effected pursuant to the impugned order shall be refunded to the petitioner along with interest @ 8 % per annum.

8.

8. Let the needful be done within a period of 3 months.
9. Disposed of in above terms.

28.08.2019
vandana/Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No