

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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CWP No.24370 of 2016 (O&M)
Decided on : 05.09.2019

Hargopal Singh Parmar

... Petitioner

Versus

Secretary Punjab State Power Corp. Ltd. and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE HARSIMRAN SINGH SETHI

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

Mr.Parminder Pal Singh Thethi, Advocate
for the respondents.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to the order dated 23.8.2016 (Annexure P-3), by which the recovery proceedings have been initiated against the petitioner for recovery of the amount, which was paid to the petitioner in pursuance to the order passed by this Court in CWP No.9673 of 1994 decided on 02.07.2004, on the ground that the said order has already been set aside by the Division Bench of this Court.

The facts as mentioned in the writ petition are that the petitioner had initially joined the Punjab PWD Electricity Branch on 19.11.1955. Thereafter, he was transferred to the Punjab State Electricity Board and ultimately, the petitioner retired from the Punjab State Electricity Board on attaining the age of superannuation on 28.02.1995. The petitioner along with some other colleagues filed the writ petition being CWP No.9673 of 1994 titled as “D.L.Sud and others Vs. PSEB”

wherein they had claimed benefit of time bound next higher scale after 9 and 16 years of service. The said writ petition was allowed by a Coordinate bench this Court on 02.07.2004 and a direction was given to grant the petitioner, who was one of the petitioners in the said writ petition, the benefit of higher pay scale on completion of 9 and 16 years of service. Against the said judgment, PSEB filed LPA No.244 of 2004 tilted as “**Punjab State Electricity Board Vs. D.L.Sud and others**”.

During the pendency of the said LPA, the question of law which was pending consideration before the Division Bench came up for consideration before Hon'ble Supreme Court of India in Civil Appeal No.3439 of 2007 titled as “ **Bhakra Beas Management Board Vs. Krishan Kumar Vij and another**” along with other connected appeals. Krishan Kumar Vij (supra) was decided on 19.8.2010. While dealing with the question of law as to whether the employees of the respondents-Board were entitled for the benefit of higher standard pay scale after rendering 9 and 16 years of service or not, Hon'ble Supreme Court of India answered in negative and held that no benefit is to be paid as being claimed by the employees. The direction given by this Court to pay the said benefit to the similarly situated employees, was set aside. In paragraph No.40 of the aforesaid judgment, the following directions were issued:-

“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.”

In the year 2012, LPA No.244 of 2004 came up for hearing and the same was disposed of in terms of the order passed by the Hon'ble Supreme Court of India in Civil Appeal No.3439 of 2007, [Krishan Kumar Vij (supra)] decided on 19.08.2010 in LPA No.244 of 2004. The relevant order in LPA No.244 of 2004 is as under:-

“This Letters Patent Appeal will stand covered by this decision of the Supreme Court dated 19.08.2010 passed in Civil Appeal No.3439 of 2007 and other connected cases.

We have perused the aforesaid order and it is our considered view that this Letters Patent Appeal should be disposed of in terms of the aforesaid order dated 19.8.2010 passed in Civil Appeal No.3439 of 2007 and the other connected cases.

Letters Patent Appeal is answered accordingly.”

It is not disputed by the learned counsel for the parties that the judgment of the learned Single Judge dated 02.07.2004 (Annexure P-1) passed in CWP No.9673 of 1994 filed by the petitioner alongwith others had already been implemented by the respondents-Board and the benefits in terms of the said judgment were already granted to the petitioner.

Now after the decision of the LPA No.244 of 2004, the respondents have started the process of recovery of the said benefit,

which was extended to the petitioner in terms of the order passed in CWP No.9673 of 1994 keeping in view the decision in LPA No.244 of 2004. Revised pension payment order was issued on 23.08.2016 revising the pension of the petitioner by withdrawing the benefit which was extended to him on account of the judgment passed by this Court in CWP No.9673 of 1994. Even the recovery was to be effected keeping in view the revised pension payment order.

The grievance which is being raised by the petitioner is that once the Hon'ble Supreme Court of India has held that no recovery is to be effected, the action of the respondents in recovering the amount from the petitioner is bad in law for the reason that even the LPA filed by the respondents-Board was disposed of in terms of the order passed by the Hon'ble Supreme Court of India in Civil Appeal No.3439 of 2007. Therefore, though the respondents were well within their rights to revise the pensionary benefits but no recovery could have been ordered.

Learned counsel for the respondents-Board on the other hand states that as per the Board, the interpretation of para No.40 of the judgment of Hon'ble Supreme Court of India reproduced before, would mean that only the employees, who were in service and were granted the said benefits and had thereafter, retired, no recovery is to be made from them whereas, the petitioner had already retired by the time they had filed the writ petition, in pursuance to which the petitioner, was granted the benefit, therefore, the judgment of the Hon'ble Supreme Court in Civil Appeal No.3439 of 2007 will not be applicable in the case of the

petitioner qua recovery of the excess amount paid. The respondents are trying to distinguish the order of the Hon'ble Supreme Court of India.

Further, learned counsel for the respondents states that there was an undertaking given by the petitioner at the time of receiving the benefit in pursuance to the judgment passed in CWP No.9673 of 1994 that in case it is found they are not entitled for the said relief, the same will be returned and therefore, the petitioners are under the said obligation to return the excess paid amount.

I have heard learned counsel for the parties and have gone through the records with their able assistance.

Once, the Hon'ble Supreme Court of India has directed the respondents not to effect the recovery on the ground that persons had retired from service, the same will be applicable on the petitioner as well even though the benefit in pursuance to the judgment dated CWP No.9673 of 1994 was extended to the petitioner after retirement. The reason assigned by the Hon'ble Supreme Court for not effecting the recovery was that it would be hard to effect recovery from the retired employee. It is not disputed that at the time of recovery, the petitioner was also a retired employee, therefore, no distinction can be made by the respondents to effect the recovery from the petitioner by giving a wrong interpretation to the para No.40 of the judgment of Hon'ble Supreme Court.

With regard to the argument that the petitioner had given an undertaking and therefore, he is liable to return the amount which he had

received in pursuance to the directions given by this Court in CWP No.9673 of 1994, the said undertaking to refund amount will be of no consequence for the reason that undertaking was given at the time of receiving the benefit, which was extended in pursuance to the orders passed by this Court, and thereafter, Hon'ble Supreme Court of India directed not to recover the amount already paid as it will be hardship on retired employee and therefore, the judgment of the Supreme Court will have precedence over the undertaking given by the petitioner especially keeping in view the fact that the Hon'ble Supreme Court of India held that it will be hardship for a retired employee to refund the amount already received, which is applicable upon the petitioners as well. Hence even on the basis of undertaking, the respondents cannot recover the amount. Therefore, the recovery of the amount as sought to be done from the petitioner is held to be bad and is accordingly set aside.

Learned counsel for the petitioner states that the some amount has already been recovered by the respondents. The amount recovered by the respondents will be returned to the petitioner within a period of three months from the date of receipt of certified copy of this order.

The writ petition stands allowed in the above terms.

05.09.2019
sd

[HARSIMRAN SINGH SETHI]
JUDGE

Whether speaking/reasoned
Whether Reportable

: Yes/No
: Yes/No