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

**(244)** **CWP No. 24707 of 2016**
**Date of Decision : 05.12.2019**

**Kahan Singh**

**....Petitioner**

**Versus**

**Punjab State Power Corporation Limited and others**

**.....Respondents**

***CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present:- Mr. Harchand Singh Batth, Advocate for the petitioner.

Mr. Anant Kataria, Advocate for
Mr. Mukesh Berry, Advocate for the respondents.

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***<u>Harsimran Singh Sethi, J. (Oral)</u>***

The grievance, which is being raised by the petitioner in the present writ petition is that a sum of ₹3,53,368/- has been deducted from the pensionary benefits of the petitioner after his retirement on the ground that he was paid higher salary than his entitlement.

As per the facts mentioned in the writ petition, petitioner was working on the post of Lineman on the day when he attained the age of superannuation on 31.01.2014. While the petitioner was in service, respondents promoted him to the post of Sub Station Attendant and petitioner immediately requested the respondents not to execute the order of promotion as he is not capable of discharging the duties of the said post.

Ultimately after a period of 2 years, the request of the petitioner was accepted and the promotion order was withdrawn and petitioner was reverted to the post of Assistant Lineman. Petitioner retired on 31.01.2014 on attaining the age of superannuation.

After the retirement, when the pension papers of the petitioner were being prepared, respondents realised that petitioner had been reverted to the post of Assistant Lineman but actually till the date of his retirement, petitioner was being paid the salary of Sub Station Attendant and, therefore, respondents unilaterally decided that an excess amount of ₹3,53,368/- has been paid to the petitioner on account of excess salary, which needs to be recovered. Respondents passed an order in this regard on 14.07.2014 (Anexure P-18) with the clear indication that the recovery of ₹3,53,368/- be done from the pensionary benefits of the petitioner. Even while issuing 'No Dues Certificate', dated 18.07.2014, which has been appended as Annexure P-19, it was mentioned that the 'No Dues Certificate' is subject to the recovery of ₹3,53,368/-. It is a matter of fact that the said recovery has been done from the pensionary benefits of the petitioner after his retirement. The challenge in this writ petition is to the said recovery of ₹3,53,368/- which has been done by the respondents.

Upon notice of motion, respondents have filed the reply and in the reply, they have stated that once the petitioner was reverted back to the post of Assistant Lineman on his request, he was not entitled for the grant of the salary of the post of Sub Station Attendant and, therefore, the salary which was being paid to the petitioner, was in excess of his entitlement and upon realizing the mistake, it has been corrected and the excess amount has been rightly recovered being the public money.

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

It is not disputed by the learned counsel for the respondents that there was no role played by the petitioner in getting the excess amount of salary. It was for the respondents to re-fix the salary of the petitioner at the time of reversion from the post of Sub Station Attendant to that of Assistant Lineman. If the respondents failed to perform their duties and kept on paying the petitioner the salary, which was higher than his entitlement, petitioner cannot be put to fault and no onus can be put upon the petitioner for drawing the higher salary than his entitlement. The question of recovery of the excess amount from a retired employee has already been settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.*** Hon'ble Supreme Court of India has laid down the guidelines as to under what circumstances, the recovery cannot be affected from the employees. Relevant para 12 of the said judgement is as under :-

> *"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:-*
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> > *(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."*

A bare perusal of the above judgement would show that no recovery can be affected from a retired employee or an employee, who is nearing retirement. In the present case the petitioner was a retired employee at the time of recovery of amount and the recovery has been done from his pensionary benefits, which is impermissible.

Even otherwise petitioner was reverted to the post of Assistant Lineman in the year 2003 and was being paid the salary of the post of Sub Station Attendant till he retired in the year 2014. Once, the recovery from a retired employee is impermissible, the act of the respondents in recovering the excess amount from the petitioner out of his pensionary benefits is contrary to the settled principles of law settled by ***Rafiq Masih's case (supra).*** Therefore, the recovery effected from the petitioner is set-aside. The orders dated 14.07.2014 (Annexure P-18), dated 18.07.2014 (Annexure P-19), dated 25.08.2014 (Annexure P-22), dated 28.08.2014 (Annexure P-23) and dated 15.01.2016 (Annexure P-29) are set-aside. Respondents are directed to release the amount of ₹3,53,368/- within a period of 2 month from the date of receipt of certified copy of this order.

Writ petition is allowed in above terms.

**December 05, 2019** **( HARSIMRAN SINGH SETHI )**
*kanchan* **JUDGE**

*Whether reasoned/speaking? Yes*
*Whether reportable? Yes*