

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 20607 of 2018

Date of Decision : 03.04.2019

Madhukar Bhatnagar

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amrik Singh, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, petitioner is challenging the recovery of ₹72,729/- vide order dated 06.06.2017 (Annexure P-2) by which, pensionary benefits were sanctioned by the office of the Accountant General, Punjab.

Learned counsel for the petitioner states that recovery of the said amount is totally arbitrary, illegal and without any valid justification as same has been done by the Department without there being any order to that effect.

As per the facts mentioned in the writ petition, petitioner was selected as a Junior Engineer on 07.07.1976 in the Department of Water Supply and Sanitation, Punjab and he, ultimately, retired as Sub Divisional Engineer on 31.05.2015. Petitioner was granted the benefit of 24 years ACP while working as Assistant Engineer on 31.10.2002. He continued to

get the said benefit of ACP till vide order dated 16.10.2009 (Annexure P-1) the said benefit was withdrawn and the pay of the petitioner was re-fixed. There is no challenge to the said order by the petitioner. After the retirement, the respondents in order to compute the pensionary benefits, sent the case to the office of the Account General, Punjab and Accountant General, Punjab vide its order dated 06.06.2017, calculated the benefits for which the petitioner was entitled for after his retirement and in the said order, it was mentioned that there is a recovery of ₹72,729/-, which is to be done from the petitioner. Petitioner is challenging the said clause put by the Accountant General, Punjab in the present writ petition.

Upon notice of motion, reply has been filed by respondents No. 1, 2 and 3. The justification for withholding the amount of ₹72,729/- has been given in paras 1 to 3, according to which, there were two recoveries outstanding against the petitioner, one in pursuance to the punishment order dated 19.03.1986 and second in pursuance to the re-fixation of his salary after withdrawing the benefit of 24 years of ACP as done vide order dated 16.10.2009. The relevant averments made in the reply are as under:-

“1. That the petitioner has filed the instant Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the condition incorporated in the Gratuity payment order (Annexure P-2) dated 06.06.2017 vide which it has been ordered to effect the recovery of ₹72,729/- out of the Gratuity amount of ₹10 lacs and for issuance of a writ in the nature of mandamus directing the respondents to pay the withheld/recovered amount to the petitioner alongwith interest at the rate of 18% per annum from the date of accrual till actual realization of the same.

2. *That in this regard, it is most respectfully submitted that impugned amount of ₹72,729/- was ordered to be recovered from the gratuity amount payable to the petitioner in view of a charge sheet served upon him during his service tenure which culminated into an order of punishment dated 19.03.1986 by virtue of which two different penalties were imposed i.e. one stopping of one increment with cumulative effect and the other for recovery of ₹1015 from him. The amount recoverable on account of this order at the time of his retirement was calculated to be ₹10,882/-.*
3. *That the remaining amount of ₹61847/- as ordered to be deducted from his gratuity, is on account of wrong fixation of pay of the petitioner in the year 2002. It is pertinent to mention here that during service tenure of the petitioner, an order No. 50795 dated 16.10.2002 was passed vide which the petitioner, when working as AE, was ordered to be granted 24 years ACP which later on was withdrawn vide an order No. 427 dated 16.10.2009 after discovering that 24 years ACP was wrongly granted to him. The Assistant Engineers (AE's) were not entitled for grant of 24 years ACP, they were rather entitled to 8 years and 16 years ACP which was ultimately converted into 10 years and 20 years ACP in terms of Govt. Instructions issued by Department of Finance, Govt. of Punjab vide letter no. 5/138/09-3FPI/881 dated 01.12.2011. Copy of said instructions is annexed herewith as Annexure R-1.*
4. *That in view of the review of the order No. 50795 dated 16.10.2002 vide which 24 years ACP was granted to the petitioner, the amount paid in excess to the petitioner was calculated at the time of his retirement at ₹61,847/- which was ordered to be recovered alongwith the amount of ₹10,882/- having become due on account of imposition of punishment vide order dated 19.03.1986 as*

referred to in Para no. 2 above.”

Learned counsel for the petitioner argues that the respondents are trying to mislead this Court as the punishment, which was imposed upon the petitioner on 19.03.1986, has already been set-aside by the Civil Court, where the said punishment was challenged by the petitioner. Even the RSA No. 2489 of 1999, which was filed by the State against the decree, was also dismissed by this Court on 06.12.2017 (Annexure P-4) and, therefore, now, no recovery stands against the petitioner in pursuance to the punishment order dated 19.03.1986.

Further, in respect to the claim of the respondents to recover an amount of ₹61847/- on account of re-fixation of salary of the petitioner vide order dated 16.10.2009, learned counsel for the petitioner states that the respondents passed an order on 16.10.2009, only re-fixing the salary. There is no order of recovery passed by the respondents. In the absence of any order of recovery, no amount could have been deducted by the respondents.

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

As far as recovery of amount of ₹10,882/- keeping in view the punishment order dated 19.03.1986 imposed upon the petitioner, counsel for the respondents is not able to rebut the claim of the petitioner that the punishment order dated 19.03.1986 has already been set-aside by the Civil Court and even the appeal filed by the State against the decree granted in favour of the petitioner has been dismissed by this Court, therefore, under these circumstances, the claim of amount of ₹10,882/- by the respondents is without any basis and cannot be allowed.

As far as the amount of ₹61,847/- which is being calculated by

the respondents on the basis of the withdrawal of the ACP benefit given to the petitioner in the year 2002, withdrawn vide letter dated 16.10.2009, the same also has no basis. A bare perusal of the order dated 16.10.2009 would show that only the re-fixation of the salary was done after withdrawing the benefit. There is no order qua recovery of any amount. No amount has been calculated by the respondents in the said order paid in excess to the petitioner, to be recovered from the petitioner. The order dated 16.10.2009 is as under:-

Office Order

“Sh. Madhukar Bhatnagar Sub Divisional Engineer was granted the 24 years ACP when he was working as AE by Chief Engineer Central Punjab Water Supply and Sanitation Department Patiala vide letter no. 50795 dated 16.10.2002 dated 07.07.2002 in the pay scale of 7220-11320 and now Chief Engineer Central Punjab Patiala vide letter no. 48424 dated 06.10.2009 has withdrawn this and his pay is fixed as below:

Dated	Earlier Fixed Pay	Revised Pay	Remarks
01.01.2000	9200	9200	-
07.07.2000	9475	9200	After withdrawing 24 years ACP Proficiency
01.01.2001	9750	9475	Annual Increment
01.01.2002	10025	9750	Annual Increment
01.01.2003	10300	10025	Annual Increment
01.01.2004	10640	10300	Annual Increment
01.01.2005	10980	10640	Annual Increment
01.01.2006	11320	10980	Annual Increment
01.01.2007	11640	11320	Annual Increment
01.01.2008	12000	11660	Annual Increment
04.12.2008	12375	12000	On Promotion as SDE in the pay scale of 6880-13500 and Annual Increment
01.01.2009	12750	12375	Annual Increment

Next Annual Increment 01.01.2010

*Executive Engineer
Water Supply and Sanitation Division,
Rajpura”*

Endorsement No.:14852-85

Dated: 16:09:2009

A bare perusal of the above reproduced office order dated 16/09/2009 would show that only re-fixation was done by the respondents and there is no order of recovery. There is not even the assessment of any excess amount paid to the petitioner in the said order. In the absence of any order of recovery, no recovery could have been done from the petitioner at the time of his retirement, therefore, recovering an amount of ₹61,847/- is also found to be without any valid justification and hence, cannot be permitted.

In view of the above, the recovery of ₹72,729/- is held to be bad and respondents are liable to release the same to the petitioner within a period of two months from the receipt of copy of this order. Ordered accordingly.

As recovery done by the respondents was without any valid justification and the said amount has been retained by the respondents with them, in view of the settled principle of law settled by Full Bench of this Court in *A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468*, petitioner shall also be entitled for interest. Let amount of ₹72,729/- be released to the petitioner with interest @ 9% per annum from the date it became due to the petitioner. Let the amount of interest be calculated within a period of two months of the receipt of the copy of this order. Whatever the amount of interest, the petitioner is found entitled for in pursuance to this order, the same should also be released within a period of one month after the calculation.

Writ petition stands disposed of in above terms.

April 03, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No