IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19054-2016
Date of decision: - 15.10.2019

Dhir Singh

....Petitioner

Versus

The Punjab State Power Corporation Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Pankaj Sharma, Advocate
for the petitioner.

Mr. Ashok Kumar Sharma, Advocate
for the respondents.

***

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance of the petitioner is that after the retirement of the petitioner, his pay has been refixed and an amount of ₹2,06,288/- has been recovered from his gratuity, which action of the respondents is contrary to the settled principle of law settled by the Hon'ble Supreme Court in **State of Punjab and others** **Vs.** **Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.**

The facts, which have been mentioned in the writ petition are, that petitioner was initially appointed as a T-Mate with the Municipal Corporation, Amritsar on 31.05.1979. Thereafter, he was promoted as an

Assistant Lineman on 31.03.1994. In the year 1995, electricity wing of the Municipal Corporation, Amritsar was merged with the Punjab State Electricity Board and the Punjab State Electricity Board was thereafter bifurcated into two parts i.e. Punjab State Power Corporation Limited and the Punjab State Transmission Corporation Limited. Petitioner was allocated the Punjab State Power Corporation Limited.

In the year 2009, petitioner was granted promotion to the post of Lineman and while working on the said post, he retired on attaining the age of superannuation on 30.06.2015. After the petitioner retired, while computing the case of the petitioner for the grant of retiral benefits, an objection was raised by the Accounts Department of the respondent-Corporation with regard to the grant of benefits of first time bound and second time bound promotional scale. Keeping in view the objections of the Accounts Department, it is the averment of the petitioner that, unilaterally, his pay was refixed and after refixing his pay, a sum of ₹2,06,288/- have been deducted from his gratuity by the respondent-Corporation. The prayer of the petitioner is that no recovery can be done from a retired employee after refixing his salary keeping in view the settled principle of law settled by the Hon'ble Supreme Court in **Rafiq Masih's case (supra)**.

Upon notice of motion, the respondents have filed the reply.

In the reply, respondents have stated that pay of the petitioner was fixed contrary to the instructions dated 07.01.2013 and therefore, after withdrawing the benefit of first time bound and second time bound scale, the pay of the petitioner was refixed and upon refixation, it was found that the petitioner has been paid an excess amount of ₹2,06,288/-.

Counsel for the respondents vehemently argued that the salary of the petitioner was wrongly fixed and the said mistake was later rectified by the department and therefore, once the mistake was rectified, the respondents are well within their right to effect the recovery as the same was public money and no grievance can be raised by the petitioner in this regard. Counsel for the respondents further states that the petitioner was also called for personal hearing before ordering the abovesaid recovery.

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

The only question, which is raised for consideration before this Court in the present writ petition, is as to whether, the recovery of an excess payment of ₹2,06,288/- could have been done from the gratuity of the petitioner or not after refixing his salary after his retirement?

The above stated facts are not in dispute that the pay of the petitioner has unilaterally refixed by the respondents by withdrawing the benefit of service benefits, which were granted to the petitioner during the course of his service career after his retirement. The withdrawal of the benefit is not under challenge by the petitioner and the only challenge is to the recovery, which is being effected from his pensionary benefits of the excess payment amounting to ₹2,06,288/-.

The Hon'ble Supreme Court in **Rafiq Masih's case (supra)** has laid down the guidelines as to under what circumstances, the recovery cannot be done from the employees. The relevant part of the said judgment 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:-
>
> (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 reproduction shows that no recovery can be ordered from a retired employee. It is not disputed by the respondents that on the date, when the pay of the petitioner was refixed and recovery of the excess payment was ordered and done, petitioner had already retired from service. Once, a bar has been imposed by the Hon'ble Apex Court on effecting the recovery from a retired employee, the action of the respondents in recovering the amount of ₹2,06,288/- from the gratuity of the petitioner after his retirement cannot be sustained and accordingly, the said act of the respondents is quashed and set aside.

No other arguments have been raised by the counsel for the parties.

In view of the above, the respondents are directed to release the payment of ₹2,06,288/-, which has been deducted from the gratuity of the petitioner, within a period of two months from the date of receipt of certified copy of this order.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

October 15, 2019
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes