IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-10525-2018

Tapinder Paul Walia ....Petitioner

Versus

State of Punjab and others .....Respondents

2. CWP-10552-2018

Hardip Singh ....Petitioner

Versus

State of Punjab and others .....Respondents

Date of decision: - 03.02.2020

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Mayank Mathur, Advocate
with Mr. Mehardeep Singh, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

By this order, above-mentioned two Civil Writ Petitions are being disposed of in the light of common question of law and similar facts involved. For the sake of convenience, the facts are being extracted from CWP-10525-2018 as 'Tapinder Paul Walia Vs. State of Punjab and others'.

In the present writ petition(s), the prayer of the petitioner is for setting aside the order dated 11.09.2017 (Annexure P-11) as well as the order dated 09.10.2017 (Annexure P-12) by which the recovery of an amount of ₹1,11,617/- has been ordered. The challenge is to the said order of recovery, which is being done after the retirement of the petitioner.

As per the averments in the present writ petition, petitioner had joined the respondent-Punjab State Cooperative Supply & Marketing Federation Limited (hereinafter referred as 'respondent-MarkFed') on 10.01.1977. Petitioner continued working as such till he attained the age of superannuation and retired on 28.02.2006. After the retirement of the petitioner, the benefits for which he was entitled including the gratuity were released to him. Petitioner was paid the gratuity to the tune of ₹3,95,683/-.

After the retirement of the petitioner, certain employees approached this Court by filing **CWP 15363 of 2011** titled as '**Nathu Ram and others** Vs. **State of Punjab and others**', against the respondent-MarkFed claiming the gratuity at the maximum ceiling of ₹10,00,000/- w.e.f. 01.01.2006. The said benefit was allowed by this Court on 31.10.2014 by allowing the said writ petition. After the said judgment, the respondent-MarkFed undertook the exercise for implementation of the judgment with regard to the employees, who retired after 01.01.2006 so as to compute their gratuity, which they will be entitled for as per the judgment under the Common Cadre Rules. In the case of the petitioner, the respondent-MarkFed arrived at a conclusion that as per the judgment of this Court in **<u>Nathu Ram's</u> (supra)** petitioner is entitled for a sum of ₹3,95,683/-, which was already paid, instead of ₹3,50,000/-. Accordingly, petitioner was paid an amount of ₹54,683/- over and above ₹3,50,000/-. This amount was released to the petitioner in the year 2017.

After the release of the amount, respondent-MarkFed realized that ₹3,95,683/- has been wrongly calculated by the respondent-MarkFed by taking the maximum limit under the Payment of Gratuity Act, 1972 as ₹10,00,000/- as on 28.02.2006, which was impermissible keeping in view the fact that the amendment to the Payment of Gratuity Act, 1972 enhancing the maximum limit was passed on 24.05.2010.

Upon realizing the said mistake, respondent-MarkFed found that the petitioner has been paid more gratuity than his entitlement and the excess payment was sought to be recovered by the respondents. Respondent-MarkFed passed an order on 11.09.2017 vide which the amount, which was paid to the petitioner upon reconsideration under the Payment of Gratuity Act, beyond his entitlement, was directed to be recovered.

After the passing of the order dated 11.09.2017, another order was passed on 09.10.2017 (P-12), by which the respondent-MarkFed came to the conclusion that an amount of ₹52,758/- was paid in excess to the petitioner. The respondent-MarkFed also computed the interest on the excess payment to the tune of ₹58,859/- and petitioner was directed to refund ₹1,11,617/-. This order dated 09.10.2017 (P-12) is under challenge in the present writ petition.

Upon notice of motion, the respondent-MarkFed have filed the reply, in which, they have defended their recovery order. In the said reply, the respondent-MarkFed have stated that at the time when the petitioner retired from service, he was entitled for the maximum gratuity of ₹3,50,000/- keeping in view the maximum limit, which was fixed under the Payment of Gratuity Act, 1972 at that time. It is further stated in the reply that only after the order passed by this Court in **<u>Nathu Ram's</u> case (supra)**, the claim of the petitioner was considered for the computation of gratuity under the Common Cadre Rules by taking the maximum limit as ₹10,00,000/- as on 28.02.2006 and while computing the same, wrong calculations were done by the respondent-MarkFed of the gratuity admissible to the petitioner. As per respondents, under the judgment of this Court in **<u>Nathu Ram's</u> case (supra)**, petitioner became entitled for the gratuity of Rs.3,54,750/-, but upon wrong calculation, petitioner was paid ₹3,95,683/- and the excess amount, which is public money, has rightly been ordered to be recovered alongwith interest as the amount, which has been paid in excess, was paid after the retirement of the petitioner and that too under the order passed in **<u>Nathu Ram's</u> case (supra)**.

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

It is an admitted fact that the petitioner had already been paid the maximum gratuity available to him under the Payment of Gratuity Act when he retired on 28.02.2006. It is also not disputed that at the time of the retirement of the petitioner, the maximum ceiling under the Payment of Gratuity Act, 1972 was ₹3,50,000/-, which amount had already been released to him. While considering the claim of the petitioner for the release of the gratuity under the Common Cadre Rules, keeping in view the order passed by this Court in **Nathu Ram's case (supra)**, by treating the maximum ceiling at ₹10,00,000/- on the date of the retirement of the petitioner i.e. 28.02.2006, the respondent-MarkFed wrongly calculated the gratuity payable to him. Petitioner was paid ₹3,95,683/-, whereas, under the Common Cadre Rules, keeping in view the order passed by this Court in **Nathu Ram's case (supra),** petitioner was only entitled for ₹3,54,750/- Once, the excess payment was made to the petitioner beyond his entitlement after the retirement in the year 2017 and immediately thereafter, upon realizing their mistake of payment of excess amount, the respondent-MarkFed passed an order of the recovery of the amount paid excess to the petitioner on 09.10.2017 (P-12). It is not a case where the petitioner continued getting excess payment for a sufficient long time. Mistake of excess payment was rectified by the respondent-MarkFed immediately within a short span of making excess payment to the petitioner. Therefore, no grievance can be raised by the petitioner with regard to the refund of the excess amount, which the petitioner received while implementing the judgment of this Court in **Nathu Ram's case (supra)**.

Learned counsel for the petitioner argues that though, the excess amount was calculated by the respondent-MarkFed itself but now the petitioner is being burdened with the interest while effecting recovery of the excess amount. Learned counsel for the petitioner argues that even if the excess amount was paid, that was paid by the respondent-MarkFed by wrongly calculating the same. Even if the amount is to be recovered, the petitioner cannot be burdened with costs as the MarkFed was responsible for paying the excess amount and petitioner cannot be caused prejudice by asking the refund of the amount alongwith interest.

This argument of learned counsel for petitioner merits acceptance. Once, the wrong calculations in paying the petitioner were done by the respondent-MarkFed itself, the petitioner cannot be asked to refund the same alongwith interest. The excess amount was paid by the respondent-MarkFed on their own without there being any act on the part of the petitioner claiming the same. Though, the respondents can claim refund of excess amount from the petitioner in the facts and circumstances of this case, but in case, the respondent-MarkFed is allowed to claim the benefit of interest on the excess amount, it would be putting premium on the wrong act of the respondent-MarkFed. The respondent-MarkFed will be taking the benefit of their own wrong in case the petitioner is asked to refund the excess amount alongwith interest, therefore, the element of interest, which has been included for the recovery amount, is arbitrary, illegal and is not at all warranted in the facts and circumstance of this case and is accordingly set aside.

Keeping in view the above, respondent-MarkFed will recalculate the amount which the petitioner is liable to refund, which should be the actual amount, which in excess has been paid to him beyond his entitlement, keeping in view the Common Cadre Rules, which are made applicable upon the petitioner in view the judgment of this Court in **Nathu Ram's case (supra)**. The said recovery will also be done after giving a show cause notice to the petitioner and by following the rules of natural justice.

It is made clear that no recovery will be done on the basis of the impugned order. The recovery will only be done on the basis of the fresh show cause notice which will be issued to the petitioner by not including the component of interest thereon.

Present writ petitions stand allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 03, 2020
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes