

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17961 of 2017

Date of decision: 26.02.2020

Pritam Singh

.... Petitioner

versus

Punjab State Power Corporation Limited and others

... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Brijesh Nandan, Advocate
for the petitioner.

Mr. Parminder Singh-I, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J.

The challenge in the present writ petition is to Annexure P/2 and Annexure P/2-A, by which the pay and pension of the petitioner was refixed as well as consequent recovery of Rs.16,171/- which was done by the respondents from the pensionary benefits of the petitioner on the ground that the recovery, which has been done from the petitioner, is impermissible as per the settled principle of law settled by Hon'ble Supreme Court of India in **State of Punjab & Others vs. Rafiq Masih (White Washer) etc. (2014) 8 SCC 883.**

At the time of hearing, learned counsel for the petitioner restricts his claim only qua the recovery, which has been effected from the pensionary benefits of the petitioner and prayer in respect of the challenge to the refixation of the pay and pension is not pressed.

As per averments made in the writ petition, the petitioner initially joined as an Assistant Lineman on 22.05.1986. He was promoted as Lineman on 21.11.1988. Thereafter, the petitioner was promoted as Foreman on 27.08.2007, from which post he retired on 30.09.2007 on attaining the age of superannuation.

After the retirement, the petitioner approached this Court by filing CWP No.22156 of 2015, with a prayer for the grant of benefit of promotional increment in view of the Circular dated 23.04.1990. The said writ petition was disposed of by this Court, directing the respondents to consider the claim of the petitioner and grant him the benefit alongwith interest.

Keeping in view the directions given by this Court, the respondents considered the claim of the petitioner and found that the pay of the petitioner needs to be revised but to his detriment as certain benefits extended to the petitioner during his service were beyond his entitlement. Accordingly, pay as well as pension of the petitioner was refixed and upon refixation of pension of the petitioner, a recovery of Rs.16,171/- was ordered to be effected from his pensionary benefits. The said action of the respondents of effecting recovery of sum of Rs.16,171/- from the pensionary benefits of the petitioner is under challenge before this Court in the present writ petition.

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

It is an admitted fact that pay of the petitioner was refixed unilaterally by the respondents after his retirement. Keeping in view the

refixation of the pay and the pensionary benefits of the petitioner, the respondents found that payment to the tune of Rs.16171/- has been made in excess than the entitlement of the petitioner. The said recovery has already been effected from the pensionary benefits of the petitioner.

The action of the respondents in recovering the excess payment made to the petitioner is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra)**, wherein the guidelines have been laid down under which the recovery cannot be done from an employee. Relevant paragraph 12 of the 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:

(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 paragraph 12(ii) would show that no

recovery can be done from a retired employee or an employee who is to retire within a period of one year of the date on which the recovery is being effected. As the petitioner had already retired at the time of refixation of his salary and consequential pensionary benefits his case is squarely covered by paragraph 12(ii) of the **Rafiq Masih's case (supra)**.

Learned counsel for the respondents has not been able to point out as to how paragraph 12(ii) of the judgement in **Rafiq Masih's case (supra)** is not applicable in the case of the petitioner.

Keeping in view the above, present writ petition is allowed. Respondents are directed to refund a sum of Rs.16,171/-, if already recovered from the pensionary benefits of the petitioner, within a period of two months from the date of receipt of certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

26.02.2020.
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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |