

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

243

CWP No. 209 of 2018
Date of Decision:05.03.2020

Parminder Kumar

.....Petitioner

Versus

The Punjab State Power Corporation Limited and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.K. Walia, Advocate
for the petitioner.

Mr. Abhilaksh Grover, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J.(Oral)

In the present writ petition, the challenge is to the order dated 02.08.2017 (Annexure P-3) which has been passed after the retirement of the petitioner, by which the benefits of the First and Second Time Bound Higher Pay scale granted to the petitioner after rendering 9 and 16 years of service in the year 1989 and 1996 respectively, have been withdrawn and the pay of the petitioner has been refixed and the recovery of the excess amount of Rs. 1,85, 387/-

has been effected from the pensionary benefits of the petitioner.

The facts as stated in the writ petition are that the petitioner joined as a Sub Station Attendant on 20.06.1980. As per the instructions issued by the respondents dated 23.04.1990, the petitioner became entitled for the grant of the First Time Bound Higher Pay Scale after rendering 09 years of service and the said benefit was extended to him vide order dated 11.06.1992 with effect from June, 1989. Thereafter, on completion of 16 years of service the petitioner became entitled for the grant of the Second Time Bound Higher Pay Scale which benefit was granted to the petitioner vide order dated 27.12.1996 with effect from June, 1996.

Thereafter, on 13.11.1997, the petitioner was promoted to the post of Sub Station Officer (for short 'SSO'). The said promotion was foregone by the petitioner. The petitioner continued working as Sub Station Attendant when again in the year 2001, the petitioner was offered promotion as a Sub Station Officer, which promotion was accepted by the petitioner. Thereafter, the petitioner was designated as Additional Assistant Engineer, from which post the petitioner retired on attaining the age of superannuation on 30.06.2017.

After the petitioner retired, the respondents while calculating the pensionary benefits of the petitioner, keeping in view the objections raised by the Audit Department, decided to withdraw the benefit of First and Second Time Bound Higher Pay Scale on the ground that the petitioner had foregone his promotion to the post of SSO in November, 1997.

The said benefit was withdrawn by the respondents vide order dated 02.08.2017 (Annexure P-3) and upon the said withdrawal of the benefit, the respondents refixed the pay of the petitioner and found that the petitioner has been paid an excess amount of Rs.1,85,387/-, which amount was deducted from the retiral benefits of the petitioner. In the present writ petition the order withdrawing the benefit of First and the Second time bound higher pay scale dated 02.08.2017 (Annexure P-3) as well as the recovery which has been done from the pensionary benefits of petitioner to the tune of Rs.1,85,387/- is under challenge.

Upon notice of motion, respondents have filed the reply. In the reply, the respondents have stated that once the petitioner had foregone his promotion to the post of SSO, which was offered to him in November, 1997, the action of the respondents in withdrawing the benefit of the First and the Second time bound higher pay scale, given to the petitioner in the year, 1989 and 1996 respectively is perfectly valid and legal. Further, the respondents have stated in the reply that as the petitioner was given excess amount beyond his entitlement, the recovery of the same is also valid. The respondents are defending their action in not only withdrawing the benefit of First and Second time bound Higher Pay scale on completion of 9 and 16 years of service, but also the recovery of the excess amount.

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

The facts which have been stated above are not in

dispute. It is not in dispute that the petitioner was given the First time Bound Higher Pay scale on completion of 9 years of service w.e.f. June, 1989. Further it is not in dispute that the petitioner remained working on the same post on which he was appointed even on completion of 16 years of service in the year 1996 and had become entitled for the grant of the Second Time Bound Higher Pay scale, which was extended to him in June, 1996. By the said date, the petitioner was never promoted. The promotion to the post of SSO was offered only in November, 1997, which is much after the grant of the benefits of the First and the Second Time Bound Higher Pay Scale extended to the petitioner in the year 1989 and 1996 respectively.

That being so, the benefits of First and the Second Time Bound Promotional Scale were extended to the petitioner as per his entitlement on the said dates. Subsequent event of foregoing the promotion to the post of SSO by the petitioner in November, 1997, cannot authorize the respondent in any manner to withdraw the benefits which the petitioner had already been granted prior to the date of the offer of promotion as SSO in November, 1997. The only jurisdiction which the respondents had, after the refusal of the petitioner to accept the promotion to the post of SSO, was not to allow any benefit of Higher Time Bound Pay Scale after November, 1997 and that too in case the petitioner became entitled for the same. There is nothing on record to show that after the petitioner had foregone the promotion to the post of SSO in November, 1997, any benefit of Higher Pay Scale was extended to the petitioner.

The question which arises for determination in the writ petition is as to whether, the benefits which have been extended to an employee prior to the date when the offer of promotion was given to him/her and was refused by the employee, will give the jurisdiction to the department to withdraw the benefits already extended. This question of law is no longer *res intergra*. Same question of law came up for consideration before this Court in **CWP No. 2587 of 2009** decided on 12.08.2010 titled as **Rattan Chand Vs. Punjab State Electricity Board and others.**

This Court, in a similar situation, as that of the petitioner, held that the benefit of time bound Higher Pay Scale granted prior to the date when an employee had foregone promotion will not give jurisdiction to the respondents to withdraw those benefits, which already stood granted. The relevant paragraphs of the judgment in **Rattan Chand's case(supra)** are as under:

'9. In the case in hand, the 1st and 2nd time-bound promotional scales were granted to the petitioner on 11.10.1990 and 18.06.1993, respectively. There is indeed no denial to the fact that the petitioner got no offer for promotion as Lineman before 18th June, 1993. As a matter of fact the first ever promotion offered to the petitioner was on 27th December, 2001 only, which he declined to accept may be due to the fact that he was nearing retirement and was not willing to shift to a new place of posting.

10. The clarificatory Circular dated 26.07.1990 (Annexure R3/1) nowhere provides nor it can lead to such absurd consequences that a promotion offered after 16 years of service would take away the service benefit given to an employee on completion of 9 years' service.

Since the petitioner never refused to accept the promotion before he was granted the time-bound promotional pay scales on completion of 9/16 years of service, the subsequent offer for such promotion and that too at the fag end of his career, cannot take away the time bound promotional scales which were rightly granted to him being a stagnated employee.

11. The impugned action of the respondents deserves to be struck down also being violative of the principles of natural justice. The withdrawl of the promotional pay scales has far-reaching civil consequences including reduction in the petitioner's pension and other retiral dues. Unfortunately, the respondents have acted with such a closed mind that they did not deem it proper to hear the petitioner before passing the order under challenge and that too at the time of his farewell on retirement.

12. Learned counsel for the respondents would still urge that the petitioner's challenge to the impugned action is hopelessly time-barred at this stage and suffers from delay and laches. It is argued that the petitioner has "no continuous or recurring cause of action" since the recovery was effected from him at once in the year 2002. Reliance is placed upon a decision of the Hon'ble Supreme Court in **Raja Ram Maize Products vs Industrial Court of MP, (2001) 4 SCC 492.**

13. I, however, do not find any merit in the contention noticed above. Firstly, the respondents withdrew the promotional pay scales without any notice to petitioner. He still expected justice and represented the authorities, followed by more than on reminders. The respondents deliberately slept over the matter and took no decision until commanded by this Court in the previous writ petition. The respondents, thus, cannot take advantage of their own *per se* illegal action. Secondly, the impugned action has led to reduction of the petitioner's monthly pension which undoubtedly gives rise to a recurring cause of action in his favour.

Thirdly and factually, there is no delay on the part of the petitioner for the reason that the impugned speaking order was passed on 23rd December, 2008 and conveyed to the petitioner vide memo dated 15.01.2009 (Annexure P6). Immediate thereafter the petitioner filed the present writ petition in February, 2009.

14. It is then urged that the 'restoration' of time-bound promotional pay scales being not a specific prayer made in this writ petition, this Court cannot grant such a relief to the petitioner. I find no force in this contention too for more than one reason. Firstly, the petitioner has specifically sought the quashing of the order dated 23.12.2008 (Annexure P5), whereby, his claim for restoration of the aforesaid pay scales has been turned down. Secondly, he has sought a writ of mandamus to direct the respondents *"to release the whole of the amount of pensionary benefits in accordance with law."* Thirdly, he has also sought refund of the amount deducted from his Gratuity. All the reliefs taken together cannot be granted without directing the respondents to restore the promotional pay-scales as were granted to the petitioner on completion of 9/16 years of service. That apart, a writ court, while exercising its jurisdiction under Article 226 of the Constitution, is not bound by such technicalities and in order to bestow complete justice to the aggrieved, it can appropriately mould the relief.

15. Learned counsel for the respondents maintains that if the writ petition is read as a whole, the petitioner is aggrieved *qua* the recovery only. In my considered view, the objection is totally based upon hyper-technicalities and that too not supported by the pleadings.

16. The petitioner, in so many words, has averred in paras 2 to 6 of the writ petition that he was rightly granted the time-bound scales on completion of 9/16 years service. In addition, having regard to the plea taken by the respondents, moreover, once this Court has

come to the conclusion that the petitioner was rightly granted the time-bound promotional pay scales, there is no rhyme or reason to deprive him from the consequential relief merely for want of twisted averments of the facts already stated in the petition.

17. For the reasons afore-stated, the writ petition is allowed; the impugned order dated 11.10.2002 (Annexure P2) and the subsequent speaking order dated 23.12.2008 (Annexure P5) are hereby quashed. The respondents are directed to restore the time-bound promotional pay scales to the petitioner w.e.f. 11.10.1990 & 18.06.1993, respectively on completion of 9/16 years of his service, besides refunding the amount of Rs.1,27,431/- deducted from the DCRG of the petitioner. The respondents are further directed to re-fix the pension and other retiral dues of the petitioner accordingly. The petitioner shall be paid the deducted amount as well as the arrears of the promotional pay-scales and pension etc. along with interest @ 9% per annum. In addition, the petitioner shall also be entitled to cost of Rs.10,000/- which the respondents shall be at liberty to recover from the officer(s)/official(s) who raised the objections leading to the withdrawal of the promotional pay scales from the petitioner. The needful shall be done within a period of *three months* from the date of receipt of a certified copy of this order.

18. Ordered accordingly.'

A bare perusal of the above would show that the Higher Time Bound Pay Scale granted to **Rattan Chand (supra)**, prior to his refusal to accept the promotion were withdrawn, which act was held to be illegal by this Court. This order was passed in the case of the respondent-Corporation itself in the year 2010 and despite there being a judgment of this Court settling the same question of law, the respondents passed the impugned order Annexure P-3 ignoring the

said law. The impugned order was passed in the year 2017 by the respondents. It is very unfortunate that the respondents passed an order, which was contrary to the law settled by this Court as far back as in August, 2010.

Further, even if it is assumed for the sake of arguments that the respondents had the power to withdraw the benefit, still the recovery of the excess amount could not have been done from the petitioner keeping in view 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(4) SCC 334.**

Hon'ble Supreme Court in **Rafiq Masih's case (supra)** has laid down the guidelines under which the recovery cannot be done from the employee. 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, summaries 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 would show that as per Clause (ii) of paragraph No. 12 of the above judgment, no recovery can be done from a retired employee or an employee who is nearing retirement.

In the present case, the impugned order of refixing the salary of the petitioner was passed after his retirement and the recovery of the excess amount was done by the respondent from his pensionary benefits, which is impermissible but still, the respondents ignored to the settled principle of law even for effecting the recovery of the excess amount from the retiral benefits of the petitioner.

That being so, the impugned order dated 02.08.2017 (Annexure P-3) is set aside and even the action of the respondents in recovering the amount from the pensionary benefits is also held to be bad and is accordingly set aside. The respondents are directed to restore the benefits which were withdrawn from the petitioner vide impugned order dated 02.08.2017 (Annexure P-3) and recalculate the pensionary benefits of the petitioner and grant him the benefit of the arrears for which the petitioner will become entitled for. The recovery which has been done from the petitioner will also be refunded to him.

As the impugned order was passed ignoring the settled

principles of law, the petitioner will also be entitled for interest on the amount which the petitioner will become entitled to receive under this order. Once, the respondents have ignored the settled principle of law and passed orders contrary to the law, the respondents are under obligation to pay the interest as the petitioner has suffered prejudice due to illegal action of the respondents. The petitioner is held entitled for interest @ 9% per annum from the date the amount had become due till the amount is released to the petitioner in pursuance of this order.

Let this order be complied with by the respondents within a period of three months from the date of receipt of the certified copy of this order.

Present writ petition stands allowed in the above terms.

[HARSIMRAN SINGH SETHI]
JUDGE

March 05, 2020

rashmi

Whether speaking/reasoned
Whether reportable?

Yes
Yes