

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

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CWP No.26328 of 2016

Date of Decision : 18.02.2020

Surjit Singh

....Petitioner

v/s

Haryana Vidyut Parsharan Nigam Limited and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Manoj Chahal, Advocate for the petitioner.
Mr. Pritam Saini, Advocate for respondent Nos.1 & 2.
Mr.Sudhanshu Makkar, Advocate for respondent Nos.3 to 5/*BBMB*.

B.S. Walia, J. (Oral),

[1] Prayer in the petition under Article 226/227 of the Constitution of India, is for the issuance of a writ in the nature of certiorari to quash orders (Annexure P/3) dated 30.01.2015 and Annexure P/9 dated 15.06.2016⁹ vide which recovery from the pay of the petitioner was ordered.

[2] Brief facts of the case, leading to the filing of the writ petition are that the petitioner who is an Addl. S.E. was appointed as Junior Engineer on 07.06.1993 in the erstwhile HSEB (now HVPNL) on 03.08.1995. The petitioner was on deputation in the Bhakra Beas Management Board (BBMB). HVPNL vide order (Annexure P/1) dated 15.04.2009 revised the pay of the petitioner w.e.f. 01.01.2006. Thereafter, BBMB vide order (Annexure P/2) dated 01.07.2009 fixed the pay of the petitioner at ₹57,970/-. Subsequently, vide order (Annexure P/3) dated 30.01.2015, the Chief Accounts Officer, HVPNL refixed the pay of the petitioner at ₹52,010/- as on 01.07.2009 and accordingly requested

BBMB to fix the pay of the petitioner accordingly and effect recovery, if so made out in terms of circular No.CH-27/II(679) F/2008-2009/Vol.-II dated 23.07.2010.

[3] Pursuant thereto, respondent No.3 i.e. BBMB issued pay slip (Annexure P/4) dated 12.02.2015 and fixed the pay of the petitioner, reducing it w.e.f. 01.07.2009 and ordering recovery also to be effected from the petitioner in respect of the excess payment made.

[4] Learned counsel for the petitioner while not disputing the fixation of pay vide Annexure P/4 relies upon (Annexure P/6) i.e. communication issued by the HVPNL to the BBMB that recovery of excess payment for a period in excess of 05 years before the date of orders of recovery could not be made in view of the decision of the Supreme Court in 'State of Punjab and others versus Rafiq Masih etc.', 2015(4) SCC 334.

[5] Pay slip (Annexure P/4), whereby recovery was ordered was withdrawn by BBMB in the light of order of respondent No. 1 Annexure P/3 dated 30.01.2015 whereby recovery was to be effected w.e.f. 09.04.2010 to 08.06.2014 hence new pay slip Annexure P/9 dated 15.06.2016 was issued by respondent No.5 i.e. Senior Accounts Officer, GAD, BBMB, Nangal to effect recovery accordingly.

[6] The petitioner represented vide Annexure P/10 dated 07.09.2016 to respondent No.5 that recovery could not be made in view of the decision of the Supreme Court in Rafiq Masih's case (*supra*) as recovery was for a period in excess of 05 years prior to the date of order.

[7] Learned counsel states that he does not dispute the fixation of pay and the only grievance is that recovery for a period in excess of 05 years prior to the date of order of recovery is not permissible in view of the decision of the

Supreme Court in **Rafiq Masih's** case (*supra*), particularly since there was no misrepresentation on the part of the petitioner in getting the pay fixed.

[8] *Per contra*, learned counsel for the respondents have relied upon the subsequent decision of the Supreme Court in '**High Court of Punjab & Haryana and others** versus **Jagdev Singh**', 2016(4) SCC 267 in the context of undertaking (Annexure R/2) dated 09.03.2009 given by the petitioner. Relevant extract of the undertaking is reproduced as under:-

"I hereby undertake that any payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Nigam either by adjustments against future payments due to me or otherwise."

[9] Faced with the aforementioned submission, learned counsel for the petitioner contends that although undertaking was given by the petitioner but the same was given to the BBMB, whereas pay of the petitioner was fixed by the HVPNL.

[10] *Per contra*, learned counsel for the respondents contends that BBMB also fixed the pay of the petitioner vide order (Annexure P/2) dated 01.07.2009 in terms of pay fixation ordered by HVPNL vide order (Annexure P/1) dated 15.04.2009 and that payment of the salary to the petitioner as per pay fixation ordered by BBMB was made to the petitioner by none else than BBMB, therefore, the undertaking also had to be given by the petitioner to the BBMB and not to HVPNL.

[11] I have considered the submissions of learned counsel for the parties.

[12] Learned counsel for the petitioner has not disputed that pay of the petitioner fixed vide Annexure P/3 was not correctly fixed. Only ground of challenge raised is in terms of decision of the Supreme Court in **Rafiq Masih's** case (*supra*). It is also not in dispute that petitioner gave an undertaking dated 09.03.2009 (Annexure R/2), that any payment found to have been made as a result of incorrect fixation of pay or any excess payment would be refunded by him either by adjustments against future payments due to him or otherwise.

[13] Hon'ble the Supreme Court by referring to the operative part of its order in **Rafiq Masih's** case (*supra*) observed that recovery from a retired employee or employee due to retire within 01 year of order of recovery would be permissible in case such officer to whom the payment was made in excess was in the first instance clearly placed on notice that any payment found to have been made in excess would be required to be refunded. Relevant extract of the decision in **Jagdev Singh's**, case (*supra*) is reproduced as under:-

“10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc. 2015(1) S.C.T. 195 : 2015(1) Recent Apex Judgments (R.A.J.) 104 : (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.”

(emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

[14] Since in the instant case, the petitioner gave an undertaking to refund any excess payment on account of incorrect fixation of pay vide (Annexure R/2) he is bound by the same. Mere fact that recovery is for a period in excess of 5 years before the order of recovery is issued would also be squarely covered by the decision in Jagdev Singh's case (supra) in view of the undertaking Annexure R/2 dated 09.03.2009. Accordingly, the challenge to the recovery is unsustainable. However, in view of the peculiar facts of the case,

recovery is ordered to be made in equated monthly installments spread over a reasonable period of time.

(B.S. Walia)
Judge

February 18, 2020
‘Rajneesh’

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No