IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26677 of 2017

Manjeet Singh .... Petitioner

versus

Punjab State Power Corporation Limited and others ... Respondents

CWP-18290 of 2017

Sewak Singh .... Petitioner

versus

Punjab State Power Corporation Limited and others ... Respondents

Date of decision: 26.02.2020

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pankaj Sharma, Advocate
for the petitioner in CWP-26677 of 2017.

Mr. Brijesh Nandan, Advocate
for the petitioner in CWP-18290 of 2017.

Ms. G.K. Mann, Advocate
for the respondents in CWP-26677 of 2017.

Ms. Devki Anand Sullar, Advocate
for the respondents in CWP-18290 of 2017.

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HARSIMRAN SINGH SETHI, J.

By this order, above mentioned two writ petitions are being disposed of as both the writ petitions involve the same question of law and involve similar facts. For the purpose of this order, the facts are being taken from CWP No.26677 of 2017.

The grievance of the petitioner is that vide order dated 10.05.2017 (Annexure P/7), the respondents have deducted an amount of Rs.1,04,323/- from the gratuity of the petitioner by refixing his salary after his retirement, which according to the petitioner is not permissible keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **State of Punjab & Others vs. Rafiq Masih (White Washer) etc. 2015(4) SCC 334.**

As per the facts mentioned in the present writ petition, the petitioner initially joined as RTM in the Electricity wing of Municipal Corporation Amritsar on 01.03.1988. Thereafter, he was promoted as Assistant Lineman on 08.10.2001. While working on the said post, the petitioner retired on attaining the age of superannuation on 30.04.2015. While considering the claim of the petitioner for releasing his pensionary benefits, the audit department/respondent Corporation raised an objection that a time bound promotional scale after completion of 09 years of service, was given to the petitioner in October, 2010 which was contrary to the settled principles of law and, therefore, the said benefit is liable to be withdrawn. Thereafter, without giving any opportunity of hearing to the petitioner, the respondents unilaterally withdrew the benefit of time bound promotional scale from the petitioner and refixed the salary of the petitioner after his retirement. After refixing salary of the petitioner, the respondents found that the petitioner was paid a sum of Rs.1,04,323/- in excess than his entitlement and passed order of recovery dated 10.05.2017 (Annexure P/7), which order is under challenge before this Court in the present writ petition.

Upon notice of motion, the respondents have filed reply. In the reply, respondents have stated that pay of the petitioner was wrongly fixed by grating him the benefit of time bound promotional scale after completion of 09 years of service in October, 2010 and the said benefit was extended beyond his entitlement, hence the same was rightly withdrawn. It is further stated in the reply that upon refixation of salary of the petitioner, it was found that an excess amount of Rs.1,04,323/- was paid to the petitioner, hence, the same was rightly ordered to be recovered from the petitioner after his retirement. Respondents have further stated that after retirement, the petitioner had given in writing that recovery of an excess amount paid to him can be done from his pensionary benefits and it was under these circumstances, the same has been deducted from the gratuity of the petitioner.

Learned counsel for the petitioner rebuts the same by saying that petitioner had already retired and his pensionary benefits were not being released by the respondents and as he had paucity of funds and one of his son was to get married, therefore, under those circumstances, he had written to the respondents to release his pensionary benefits after deducting the excess amount paid to him. Learned counsel for the petitioner argues that the said letter cannot be treated as an undertaking so as to allow the respondents to recover the amount from the gratuity of the petitioner.

I have heard learned counsel for the parties and perused the records with their able assistance.

It is a matter of fact that the petitioner retired on attaining the age of superannuation on 30.04.2015. By the said date, the petitioner was getting the benefit of time bound scale extended to him in the year 2010 after rendering 09 years of service in the cadre of ALM. It was after the retirement of the petitioner, the respondents decided to withdraw the said benefit and that too unilaterally without giving the petitioner, the opportunity of being heard, which itself is against the natural principles of law and is impermissible.

Further, after withdrawing the benefit of time bound promotional scale after 09 years of service, the pay of the petitioner was refixed by the respondents, whereby the respondents found that a sum of Rs.1,04,323/- was paid in excess to the petitioner than his entitlement, which needs to be recovered. It is the settled principle of law settled by the Hon'ble Supreme Court of India in Rafiq Masih's case (supra) that no recovery can be effected from a retired employee after withdrawing a benefit, which was extended to the employee during his/her service. In R**afiq Masih's case (supra)** Hon'ble Supreme Court of India has issued guidelines as to under what circumstances recovery cannot be effected 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.
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> (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 paragraph 12(ii) shows that no recovery can be done from a retired employee or an employee who is about to retire within one year of the order of recovery. In the present case, the claim of the petitioner is squarely covered by paragraph 12(ii) of the **Rafiq Masih's case (supra).**

Learned counsel for the respondents is not able to state any fact as to how, the claim of the petitioner is not covered by the judgement in **Rafiq Masih's case (supra)** but, argues that petitioner himself has given in writing for effecting the recovery of excess amount paid to him from his pensionary benefits.

The letter requesting the respondents to release the pensionary benefits after deducting the excess payment cannot be treated as an undertaking as the same was not given by the petitioner at the time of receiving the benefit of time bound promotional scale after rendering 09 years of service in October, 2010. The petitioner had given the same after his retirement as his pensionary benefits had been withheld by the respondents so as to recover the excess amount of Rs.1,04,323/- and that too keeping in view the paucity of funds. The undertaking, which could be taken into account for withdrawing the benefit or recovering an excess amount is, the undertaking, which an employee gives at the time of receiving the said benefit, which has sought to be withdrawn. Therefore, the case of the petitioner is entirely different as no undertaking has been produced by the respondents, which was given by the petitioner at the time of receiving the benefit of time bound promotional scale in the year 2010 so as to enable the respondents to withdraw the said benefit and recover the amount as well. That being so, a letter allowing the respondents to deduct the amount from pensionary benefits of the petitioner cannot be treated as an undertaking.

Keeping in view that the recovery of an excess amount of Rs.1,04,323/- from the pensionary benefits of the petitioner being contrary to the settled principle of law as settled by the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra),** the respondents are directed to refund the said amount to the petitioner within a period of two months from the date of receipt of certified copy of this order.

Both the writ petitions stand allowed in above terms.

(HARSIMRAN SINGH SETHI)
26.02.2020. **JUDGE**
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No