

**224 /226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1. CWP No.6020 of 2018 (O&M)
Date of decision : January 30, 2020**

Mangat Rai Petitioner

Versus

Punjab State Power Corporation Ltd. and others Respondents

2. CWP No.6692 of 2018 (O&M)

Dalbir Singh Petitioner

Versus

Punjab State Power Corporation Ltd. and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Sehajbir Singh, Advocate for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, both the writ petitions details of which have been given in the heading of this order, are being decided as both the writ petitions involve the same question of law and similar facts. For the purpose of the present order, the facts are being taken from CWP No.6020 of 2018.

In the present writ petition, the challenge is to the recovery, which is being effected from the petitioner after the retirement.

Learned counsel for the petitioner argues that no recovery can be effected from a retired employee or a Class-III and Class-IV employee, keeping in view the law laid down by Hon'ble the Supreme Court of India in case of *“State of Punjab Vs. Rafiq Masih(White Washer) & Ors”,(2014) 8 SCC 883.*

Learned counsel for the respondents argues that in the present case, the judgment passed in ***Rafiq Masih's*** case (*supra*) will not be applicable as there was an undertaking, which has been given by the petitioner wherein, the petitioner has admitted and allowed the respondents that the recovery of excess amount be done from his pensionary benefits. Hence, the judgment of ***Rafiq Masih's*** case (*supra*) will not be applicable, keeping in view of the laid down by Hon'ble the Supreme Court of India in ***“High Court of Punjab and Haryana and others v Jagdev Singh”, (2016) 14 SCC 267.***

Learned counsel for the petitioner raises a dispute qua the undertaking also. Learned counsel for the petitioner argues that the said undertaking was forced upon the petitioner and the same was not voluntarily given and under the circumstances, when the pensionary benefits of the petitioner were under the custody of the respondents, the petitioner had no option but to give into the forced undertaking so as to enable the respondents to recover the excess amount from the gratuity of the petitioner. Therefore, the said undertaking cannot be treated as an undertaking so as to enable the respondents to seek the benefit of the judgment of ***Jagdev Singh's*** case (*supra*).

Learned counsel for the petitioner does not deny the factum of giving of undertaking. The factum whether the undertaking was forced upon the petitioner, cannot be decided in the writ petition under Article 226 of the Constitution of India, as evidence is needed to prove the said allegation.

Faced with this situation, learned counsel for the petitioner prays that the petitioner be allowed to withdraw the present writ petition with liberty to approach the Civil Court for the redressal of the grievance as raised in the present writ petition.

Both the aforesaid petitions are dismissed as withdrawn, with the liberty, as prayed for.

(HARSIMRAN SINGH SETHI)
JUDGE

January 30, 2020

sarita

Whether speaking / reasoned

Whether Reportable:

Yes

No