

213 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-14246-2016

Date of Decision: 01.04.2022

Mani Ram

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Goyal, Advocate,
for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Mr. Charanjit Singh Bakhshi, Advocate, and
Mr. Sunil Kumar Pandey, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed for setting aside the letter dated 21.04.2014 (Annexure P-5), vide which the respondents reduced the pay and the consequent pension of the petitioner, so as to effect the recovery of Rs.2,10,278/- out of the amount of Rs.5,39,086/- admissible to the petitioner as pensionary benefits.

Learned counsel for the petitioner submits that the petitioner was appointed as a Chowkidar in the respondent-Department on 25.03.1982. Thereafter, he was promoted as a Lower Division Clerk on 19.09.1989, after which, he was promoted as an Upper Division Clerk on 06.08.2008 and while working on the said post, he attained the age of superannuation on 31.03.2013. Keeping in view the last pay drawn by the petitioner, the pensionary benefits were assessed and the same were released

to him. After approximately eight months of his retirement, he was served with a show cause notice, wherein it was mentioned that while working on the post of Lower Division Clerk, the petitioner was granted certain increments, for which he was not entitled for keeping in view the fact that he failed to pass the departmental examination, and therefore, the increments so granted are liable to be recovered from him and consequently the pay of the petitioner will be re-fixed, which would also have an effect of reducing the pension being extended to the petitioner. After the reply filed by the petitioner, the respondents passed an order, wherein they held that as the petitioner was required to pass the departmental examination while working on the post of Lower Division Clerk, which he failed to do, therefore, the increments being extended to him were beyond his entitlement and the same were to be withdrawn by the Department concerned. The pay of the petitioner was re-fixed and a sum of Rs.5,39,086/- was directed to be recovered from the petitioner. The said order is under challenge in the present petition.

After notice of motion, the respondents have filed a reply, wherein the action of reducing the pay of the petitioner by the respondents after his retirement has been defended on the ground that the petitioner was not entitled for the grant of increments because of non-passing of the departmental examination, therefore, no grievance can be raised by the petitioner in this regard.

Learned counsel for the petitioner submits that not only the action of the respondents in recovering the increments from the pay of the petitioner is bad, but the said benefit being drawn by another colleague of the petitioner, namely Kerpall Singh, has been held to be valid keeping in

view the resolution passed by the Board of Directors in their meeting held on 04.11.2009, wherein it was mentioned that where an employee got the promotion to the post of Lower Division Clerk without incorporation of the condition of passing of the departmental examination, no increment should be withdrawn from him/her.

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

It is a conceded position before this Court that while promotion was extended to the petitioner to the post of Lower Division Clerk, there was no condition of passing the departmental examination within a specific time so as to become eligible for the grant of increment. In the absence of the said condition, no action could have been taken by the respondents against the petitioner for not passing the said examination. It is a matter of fact that the petitioner remained in service for a period of fourteen years after being promoted to the post of Lower Division Clerk and at no given point of time, the petitioner was asked to clear the said departmental examination, but it is an undisputed fact that the petitioner was extended the benefit of increment every year without any reservation.

That being so, coupled with the fact that the Board of Directors of the respondent-Corporation in their meeting held on 04.11.2009 had already taken a decision that where no condition of passing of the departmental examination was incorporated in order of promotion in promoting a Class IV employee to a Class III post, the increments should not be stopped, hence no fault can be found in granting the increments to the petitioner by the respondents. It is also a conceded position before this Court that one Kerpall Singh, who was colleague of the petitioner and was

similarly situated, was allowed to retain the increments, despite the fact that he also did not pass the departmental examination after being promoted to the post of Lower Division Clerk, and the said action was taken on the basis of the decision taken by the Board of Directors of the respondent-Corporation in their meeting held on 04.11.2009. That being so, the petitioner is covered by the said decision in his favour as well that his increments already granted could not have been withdrawn by the respondents because of non-passing of the departmental examination and that too five years after his retirement. Further in the present case, the show cause notice was issued to the petitioner after his retirement and at the said given point of time, there was no master-servant relationship between the petitioner and the respondent-Department.

Any service benefit extended to an employee, if is to be withdrawn after the retirement, the said jurisdiction has to be supported by the Rules governing the service of the said employee. In the present case, no such Rule has been brought to the notice of this Court which will give jurisdiction to the respondents to withdraw the benefit of increments already extended to the petitioner while he was in service after retirement. Benefit of increment granted was not extended to the petitioner immediately before his retirement but the same was extended to him nine years prior to his retirement. That being so, at a belated stage, withdrawing a benefit which was extended by the respondents themselves, without there being any misrepresentation on the part of the petitioner, cannot be allowed keeping in view the judgment of the Hon'ble Supreme Court of India passed in “**State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**”, 2015(1) **S.C.T., 195**, according to which, no recovery can be effected from a retired

employee, especially by withdrawing the benefit which an employee continued to get for a period of five years before the proposed action. The relevant paragraph of the said judgment is as under:-

“ - x - x -

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.

- x - x -”

withdrawing the increments from the petitioner on the ground that he failed to pass the departmental examination is not only against the terms and conditions imposed in the promotion order of the petitioner but is also discriminatory in nature. Impugned order is also contrary to the settled principle of law, hence impugned letter dated 21.04.2014 (Annexure P-5) is quashed. Any amount, which has been recovered from the petitioner in pursuance to letter dated 21.04.2014, be refunded to him and if the petitioner's pension has also been reduced by the respondents due to the said withdrawal of increment, the same be also restored to the position, as it existed before withdrawal of the benefit of increments by the respondents and the arrears of pension, if any, be also released in favour of the petitioner within a period of two months from the date of receipt of the copy of this order.

Allowed in the above terms.

01.04.2022*Apurva***(HARSIMRAN SINGH SETHI)
JUDGE**

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes