

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

CWP No. 13066 of 2018
Date of Decision : 10.03.2022

Sada Nand Ram

...Petitioner

Versus

Punjab State Power Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Satvir Singh, Advocate for the petitioner.

Mr. Vaibhav Narang, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

The present petition has been filed challenging the order dated 17.11.2015 (Annexure P-2) by which, a sum of ₹1,75,426/- has been recovered from the pensionary benefits of the petitioner.

As per the facts mentioned in the petition, the petitioner joined the service of the respondent-Punjab State Electricity Board (now Punjab State Power Corporation Limited) on 03.12.1980. He was promoted as a Junior Engineer on 07.10.1993 and he ultimately, retired from service on attaining the age of superannuation on 31.01.2015.

Learned counsel for the petitioner argues that the grievance of the petitioner is that while calculating his pensionary benefits, the respondents have deducted a sum of ₹1,75,426/- from his gratuity and that

too without giving any explanation for the same. Learned counsel submits that keeping in view the fact that no justification has been given by the respondents with regard to the recovery, which is being done from the petitioner in the impugned order dated 17.11.2015 (Annexure P-2) coupled with the settled principle of law settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***, the recovery which has been done from the petitioner after his superannuation, is not arbitrary and illegal but is also contrary to the settled principle of law and hence, the same is liable to be set-aside.

Upon notice of motion, the respondents have appeared and filed their reply, wherein, they have stated that while the petitioner was in service, a charge-sheet was served upon him on 24.07.2001, wherein certain allegations were alleged against him and after the enquiry into the allegations, an order of punishment was passed on 08.03.2007 by which, four annual increments of the petitioner was stopped with cumulative effect.

Learned counsel for the respondents submits that though the said order of punishment attained finality, as the same was never challenged by the petitioner but the annual increments given to the petitioner could not be stopped, which fact was noticed at the time when he retired and the recovery is done in pursuance to the order of punishment, which was passed after following due process of law, was raised while petitioner was in active service. Learned counsel for the respondents further submits that as the punishment was never challenged by the petitioner and is attained finality, the recovery of the amount under the said order of punishment was perfectly valid and legal.

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

Once, the petitioner was imposed punishment and an order was passed to the said effect while he was in service, the said order needs to be implemented unless and until set-aside by Competent Court of Law or Appellate Authority. In the present case, nothing has been brought to the notice of this Court that the order dated 08.03.2007 imposing punishment upon the petitioner was ever set-aside by any authority. That being the factual position, giving effect to the said order at the time of retirement, cannot be treated as arbitrary or illegal or without any justification.

Though, in the impugned order, no details have been mentioned by the respondents but in the written statement the respondents have given the details of the charge-sheet as well as the impugned order passed against the petitioner and the said material is enough to justify the action of the respondents.

In the facts and circumstances of this case, the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, is not applicable for the reason that no benefit admissible to the petitioner has been withdrawn so as to recover an amount after the retirement of the petitioner but only an order of punishment already imposed upon the petitioner while in service is being effected to so as to recover the amount payable under the order of punishment. That being so, this Court is of the view that this is not a case where after retirement of an employee, recovery is being effected so as to be covered by ***Rafiq Masih's case (supra)***.

At this stage, learned counsel for the petitioner submits that

petitioner be given liberty to assail the order of punishment dated 08.03.2007.

Learned counsel for the respondents submits that though, 14 years have already elapsed since the punishment is imposed upon the petitioner but keeping in view the fact that the said order was only given effect at the time of the retirement of the petitioner, in case petitioner avails any remedy of appeal before appropriate authority assailing the said order, the same will be considered on merits and appropriate order on merits will be passed on the same.

Present petition is disposed of with liberty as prayed for.

March 10, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes