

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 25630 of 2017

Date of Decision: July 29, 2022.

Charanjit Singh

..... PETITIONER

Versus

The Punjab State Power Corporation Ltd. and others RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Pankaj Sharma, Advocate
 for the petitioner.

Mr. Vaibhav Narang, Advocate
 for the respondents.

LISA GILL, J.

Petitioner in this case is aggrieved of recovery of ₹1,00,036/- from his gratuity vide order dated 11.08.2016 post his retirement on 30.04.2016.

It is submitted that the petitioner was initially appointed as Team Mate in the Electricity Wing of the Municipal Corporation, Amritsar in June, 1979. His work and conduct was found to be satisfactory. Petitioner was promoted as Assistant Lineman in the year 2007 and he retired from the post of Lineman on 30.04.2016. It is submitted that petitioner received 9 years Time Bound Scale in March, 2003 after completing 9 years service as Assistant Lineman at Municipal Corporation, Amritsar. Petitioner had earlier received the benefit of 8 years of Proficiency Step up on 20.06.1987. Municipal Corporation, Amritsar vide Resolution dated 08.06.1993, Annexure P2, it is stated, decided that Assistant Lineman would be considered as an induction post for granting

9/16 years time bound scale ignoring service of Team Mate. Another Finance

circular No.56/1990 as mentioned in para 5 of the writ petition is stated to have been issued whereby it was decided to ignore service as regular Team Mate (RTM) for the purpose of grant of 9/16 years time bound promotional/devised promotional scales from the date when the employees were promoted as regular Assistant Lineman. While the petitioner was still in service with Municipal Corporation, Amritsar, assets and liabilities of electricity wing of Municipal Corporation, Amritsar was taken over by the Punjab State Electricity Board (for short, 'PSEB') vide office order dated 24.04.1996, Annexure P3. It was specifically stated in the terms and conditions dated 24.04.1996 that integration will be as on 01.04.1995. Thus services of the petitioner were taken over as Assistant Lineman by way of induction post. In the year 2010, PSEB was bifurcated into Punjab State Transmission Corporation Ltd. (for short, 'PSTCL') and Punjab State Power Corporation Ltd. (for short, 'PSPCL'). Petitioner admittedly became an employee of PSPCL.

As per Finance circular No.5/2013, it was decided that those employees opting for regular Team Mate (for short, 'RTM') as induction post, shall be entitled to promotional benefits and RTMs, who opt for Assistant Lineman (for short, 'ALM') as induction post shall not be entitled to promotional benefits. Said circular is reproduced in para 9 of the writ petition. Petitioner in the meanwhile retired as Assistant Lineman on 30.04.2016. During verification of petitioner's service book, Accounts Officer, PSPCL asked respondent No.3 to verify the same for the purpose of retiral benefits. Certain objections were raised to the effect that salary of the petitioner may be refixed after being appointed on the post of Assistant Lineman and secondly, proficiency step-up given to the

petitioner is liable to be adjusted at 1st Time Bound Scale, therefore, recovery should be made and salary refixed. Recovery from the petitioner's gratuity with retrospective effect was, thus, effected. Aggrieved therefrom, present writ petition has been filed.

Reply on behalf of the respondents has been filed taking the objection that recovery was correctly made in terms of Finance circular No.5/2013 and that as the petitioner has duly given an undertaking at the time of his pay fixation in the year 2006 and at the time of retirement as well, recovery of excess amount is justified and the petitioner is not entitled to refund as claimed.

Learned counsel for the petitioner vehemently argued that action of the respondents is absolutely illegal, arbitrary and contrary to the judgment of the Hon'ble Supreme Court in **State of Punjab and others v. Rafiq Masih (White Washer) etc., 2015(1) SCT 195**. It is submitted that first and foremost, recovery is sought to be made qua the benefit given to the petitioner in the year 1987 and that too by Municipal Corporation, Amritsar. Secondly, the Finance Circular No.5/2013 cannot be pressed into service by the respondents once the petitioner was admittedly inducted as Assistant Lineman with the respondents-PSPCL from MC, Amritsar. Learned counsel for the petitioner while referring to the replication to the written statement, filed by the petitioner submits that as per Finance circular No.33/1988 dated 11.11.1988, petitioner was entitled to two increments as Assistant Lineman, but his one increment was adjusted at the time of his promotion as Assistant Lineman because of Finance circular No.44/1990 dated 26.07.1990. Only one increment was given to him at that time. Relevant

part of the said circular No.33/1988 dated 11.11.1988 has been reproduced in para 3 of preliminary submissions of the replication to the written statement. Once the adjustment was done at that point of time, it is urged, there can be no recovery from the petitioner after 29 years thereafter. Learned counsel further submits that impugned order of recovery was passed without even a show cause notice leave alone an opportunity of personal hearing. In case an opportunity of personal hearing had been afforded, all these facts would have been brought to the notice of the authorities and petitioner would be saved from this unnecessary harassment. It is thus prayed that this petition be allowed.

Learned counsel for the respondents while refuting the arguments raised on behalf of the petitioner submits that recovery has been correctly effected and impugned order is liable to be upheld, especially keeping in view the undertaking given by the petitioner. Petitioner's case, it is submitted, is thus not covered by the judgment of the Hon'ble Supreme Court in **Rafiq Masih's case (supra)**. Learned counsel for the respondents relies upon the judgment of the Hon'ble Supreme Court in **Civil Appeal No.3500 of 2006 (High Court of Punjab and Haryana and others v. Jagdev Singh)**, decided on 29.07.2016. Various circulars on record are, however, not denied. He thus prayed for dismissal of the writ petition.

Heard learned counsel for the parties and have gone through the file with their able assistance.

Factual aspect of the petitioner joining service as regular Team Mate with Municipal Corporation, Amritsar in the year 1979 and his promotion to the post of Assistant Lineman on 31.03.1994 is a matter of record. It is further not

denied that at the time of integration with the Punjab State Electricity Board on 01.04.1995, petitioner was taken over as Assistant Lineman and he was inducted as such with the PSEB from Municipal Corporation, Amritsar. There is further no denial of the averment that at the time of petitioner's promotion to the post of Assistant Lineman, he was entitled to two increments in terms of Finance circular No.33/1988 dated 11.11.1988 and his one increment was adjusted at the time of his promotion in view of Finance circular No.44/1990 dated 26.07.1990. Comparative chart of the two circulars dated 11.11.1988 and clarification dated 26.07.1990 as reproduced in para 3 of the replication and not denied, reads as under:-

POINTS	CLARIFICATION
13. Grant of benefit of minimum two increments on promotion w.e.f. 1.1.1986 as the same (scheme for grant of time bound promotional/devised promotional scales) has been ordered w.e.f. 11.11.1988	13. The promotional increments are governed by para-8 which is based on the Punjab Govt. Notification dated 13.09.1988 circulated vide office order no.129/PRC/Finance dated 11.11.1988 whereby two promotional increments will be admissible to the employee who is promoted after 11 th November, 1988. Similarly, an employee who is allowed time bound promotional/devised promotional scale after 11.11.1988 be entitled for two promotional increments provided the employee if promoted after getting proficiency increment(s) he may be allowed one increment. The employees getting benefit of time bound promotional scale between 1.1.1986 to 11.11.1988 will be eligible for one increment only.

At this stage, it is relevant to take note of Finance circular No.4/1989 dated 05.01.1989 referred to by the respondents in their reply, which is reproduced as hereunder:-

“8. Pay fixation on promotion to a higher post shall be regulated according to regulation 8 of the Punjab State Electricity Board (Revised Pay) Regulations, 1988. Thus, if an employee has been/is promoted to a higher post after having got one or two proficiency step-up(s), his pay in the scale of promotion post shall be fixed by given him the benefit of only one increment.”

Recovery of ₹1,00,036/- effected from the petitioner on basis of Finance circular No.5/2013 is reproduced as under:-

“FINANCE CIRCULAR No.05/2013

Chief Accounts Officer to Director/Finance Department, PSPCL Patiala, vide memo No.6900/6950/PRC-315/2006 dated 07.01.2013.

Punjab State Power Corporation Limited is pleased to restore 1st and 2nd Time Bound Promotional Scale considering RTM/Trades Mate as induction post in the pay scales revised w.e.f. 01.01.1986 vide Finance Office order No.201/PRC/Fin-1988 (FC No.24/1990) dated 03.05.1990 (See Fin. Book page 108)” as under:-

Revised Pay Scale	Nature of the lowest induction post through direct recruitment	Pay Scale	1 st time Bound Promotional Scale to be allowed after 9 years of service	2 nd time bound Promotional Scale to be allowed after 16 years of service
01.01.1986	RTM	750-1350	950-1800 (without higher start)	1200-2200
01.01.1996	RTM	2720-4775	3480-6500	4300-7500

The above shall be subject to condition that the employees opting for RTM as induction post shall be entitled to promotional benefits and RTMs opting ALM as induction post shall not be entitled to promotional benefits but in present case the instructions issued from time to time vide O/O No.197/fin/PRC-1988 dated 23.04.1990 and thereafter shall be applicable.

Though the impugned order could have been set aside on the ground of being violative of principles of natural justice inasmuch as no notice was issued to the petitioner and no opportunity of hearing was provided, in the given facts and circumstances, it is considered appropriate to decide the matter on merits as the writ petition has been pending since the year 2017 before this Court and stand of the respondents is clear from the reply filed.

It cannot be denied by the respondents that at the time of integration with the respondent-Board induction post of the petitioner was Assistant Lineman. Adjustment of increment had taken place at the time of his promotion as Assistant Lineman while he was still serving with Municipal Corporation, Amritsar. Petitioner had been promoted to the post of Lineman by the respondent-Board. There is no allegation much less any evidence to show that any incorrect benefit has been secured by the petitioner due to any concealment on his part or that he was aware of any kind of undue benefit being derived by him. Benefit of increment sought to be adjusted, was afforded to the petitioner wayback when no undertaking was sought or had been given by the petitioner. Reliance sought to be placed on the undertaking given by the petitioner at the time of receipt of his pension is clearly misplaced in the given factual matrix. Therefore, the judgment of the Hon'ble Supreme Court in Jagdev Singh's case (supra) would not be applicable in the given facts and circumstances. In the case of Jagdev Singh's case (supra) the officer concerned had furnished an undertaking at the time benefit in question had been afforded, which is not the case in this writ petition.

Learned counsel for the respondents is unable to point out any undertaking submitted by the petitioner at the time, the benefit now sought to be withdrawn, was afforded to him. Therefore, the matter in any case is squarely covered by the judgment of the Hon'ble Supreme Court in **Rafiq Masih's case (supra)** inasmuch as recovery could not have been effected from the gratuity due to the petitioner. Impugned order dated 11.08.2016 (Annexure P5) thus, being unsustainable is set aside.

Accordingly, it is directed that the amount of ₹1,00,036/- be refunded to the petitioner alongwith interest at the rate of 6% per annum.

Writ petition is, accordingly, allowed.

July 29, 2022.
'om'

(LISA GILL)
JUDGE

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