

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP No.479 of 2019**

**Date of decision : 16.02.2023**

Subash Kumar

....Petitioner

Versus

Punjab State Power Corporation Limited and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

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

Mr. Sehajbir Singh, Advocate  
for the respondents.

**PANKAJ JAIN, J.**

Petitioner is aggrieved of the order dated 17<sup>th</sup> of April, 2018 passed by respondent No.2 entailing recovery of Rs.1,43,172/- from the gratuity of the petitioner which became payable to him at the time of voluntary retirement.

2. The petitioner was initially appointed as T-mate in the Electricity Wing of Municipal Corporation and was later on promoted as Assistant Lineman w.e.f. 3<sup>rd</sup> of October, 2001. It needs to be clarified here that Electricity Wing of Municipal Corporation, Amritsar was taken over by Punjab State Electricity Board in the year 1996 vide Annexure P-1. The services of the petitioner were taken as RTM by way of induction post under PSEB. Though at the time of take-over

the petitioner was taken as Assistant Lineman with the Board. After bifurcation of Punjab State Electricity Board in the year 2010, PSPCL came into being and the petitioner became employee of PSPCL. Petitioner applied for voluntary retirement. At that point of time an objection was raised that the proficiency step-up awarded to the petitioner on 11<sup>th</sup> March, 1996 needs to be reconsidered and the salary/ pay of the petitioner needs to be re-fixed and recovery be made. Resultantly, recovery of Rs.1,43,172/- was made from gratuity payable to the petitioner.

3. Ld. Counsel for the petitioner submits that apart from being covered by ratio of law laid down in **State of Punjab and others vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334** even on facts the Corporation erred. Reliance is being placed upon Finance Circular No.33/88 dated 11<sup>th</sup> of November, 1988 to claim that the petitioner was entitled for two increments as per the same. However, he was given proficiency step-up so one increment was adjusted and he was awarded only one increment as per the said Circular and further classificatory Finance Circular No.44/90 dated 26<sup>th</sup> of July, 1990. He thus submits that either two increments have to be awarded to the petitioner under Circular No.33/88 or one increment has to be adjusted for having been awarded proficiency step-up as per Circular No.44/90. Thus, even on merits the claim of the petitioner cannot be denied.

4. Per contra, Mr. Sehajbir Singh, Advocate appearing for respondent is not disputing the fact that the matter is squarely covered by ratio of law laid down in **Rafiq Masih's case** (supra).

5. I have heard counsel for the parties and have gone through records of the case.

6. The fact which cannot be disputed is that proficiency step up to the petitioner is an issue that relates to the year 1996. The petitioner having retired as an Assistant Lineman is a Class-III employee. In Rafiq Masih's case (supra), Apex Court held 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.
- (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.”

7. Thus, in terms of ratio of law laid down in **Rafiq Masih's case** (supra) action of the respondents in making recovery from the gratuity amount of the petitioner cannot be sustained and is hereby ordered to be quashed.

8. Resultantly, the present writ petition is allowed. Respondents are directed to reimburse the recovered amount to the petitioner within eight weeks from the date of receipt of copy of this order along with interest calculated @ 9% per annum from the date of recovery made, till the date actual payment.

**February 16, 2023**

Dpr

**(PANKAJ JAIN)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No