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

235 **CR-4571-2017 (O&M)**
Date of Decision :29.05.2023

Punjab State Electricity Board and another ...Petitioners

Versus

Sukhdev Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anil Kumar Sharma, Advocate for the petitioners.

None for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-14716-CII-2017

As prayed for, application is allowed.

CR-4571-2017

Present revision petition has been filed challenging the order dated 28.03.2017 (Annexure P-1) by which, a direction has been issued to the petitioners-judgment-debtor to make the payment without deducting tax on the arrears.

Learned counsel for the petitioner-Board argues that keeping in view the provisions of the Income Tax Act especially, circular dated 05.10.2012 by which, definition of salary has been elaborated, the grant of arrears on account of pension, gratuity or leave encashment is amenable to tax deduction and the same has rightly been done while extending the benefits to the respondent-decree holder.

Learned counsel for the petitioner-Board submits that without adhering to the Income Tax Act while executing the judgment and decree in question, the Executing Court has directed not to deduct the tax while making the payment of arrears to the respondent, which direction is contrary to the law relating to recovery of tax at source.

Despite service, no one has appeared on behalf of the respondent.

I have heard learned counsel for the petitioners and have gone through the record with his able assistance.

Once, as per the circular dated 05.10.2012 issued under the Income Tax Act on the arrears of salary, salary also includes wages, fees commissions, pension, gratuity and leave encashment, hence on the arrears of salary as well as pension and other pensionary benefits the tax is to be deducted at source, the Executing Court is under an obligation to ensure that while executing the judgment and decree, no law which exists at the relevant time is violated so as to harmoniously execute the judgment and decree in question.

In the present case, impugned order dated 28.03.2017 (Annexure P-1) has been passed by the Executing Court without considering the actual facts and the law with regard to the deduction of income tax at source.

Even otherwise, the said amount has only been deducted to be deposited with Income Tax Department and the respondent is free to file for refund in case he is not liable to pay any income tax hence, no prejudice is being caused to the respondent-plaintiff.

Keeping in view the above, order dated 28.03.2017 (Annexure P-1) is set aside with the clear indication that the amount deducted as TDS amounting to Rs.1,91,100/-, respondent-plaintiff will be free to claim from the Income Tax Department in case, he is entitled to do so.

Present revision petition stands allowed of in above terms.

May 29, 2023 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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