

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2949-2022

Date of decision : 04.05.2023

Mohinder Pal

..... Petitioner

versus

Punjab State Power Corporation Limited and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rimple Saini, Advocate
for the petitioner.

Ms. Sarveen Gogia, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

Counsel for the petitioner prays for issuance of a writ in the nature of certiorari quashing the impugned order dated 17.02.2020 (Annexure P-1), whereby an amount of Rs. 5,03,153/- was sought to be recovered from the petitioner who retired from the respondent-Corporation as Lineman.

2. Counsel for the petitioner would submit that the action of the respondents being in the teeth of law laid down by Apex Court in the case of *State of Punjab and others vs. Raffiq Masih and others, reported as 2015(4) SCC 334* needs to be quashed and the recovery, if any, made from the petitioner be ordered to be refunded back as the Corporation is trying to rake up the issue more than 16 years prior to the date of retirement of the petitioner.

3. Per contra, counsel for the respondents submits that the petitioner was not entitled for time bound pay scale on 05.09.2003 having

foregone promotion on 25.03.2003. The said time bound pay scale on completion of 16 years of regular service on 05.09.2003 ought not have been granted to the petitioner and was wrongly granted. She further submits that at the end of day, the Corporation being a State instrumentality, the petitioner cannot be allowed to have windfall gain of the tax payers money.

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

5. Facts are not much in dispute. The petitioner had admittedly foregone his promotion on 25.03.2003 as is evident from document (Annexure R-1). In terms of circular R-2, he ought not have been granted the time bound pay scale as foregoing promotion itself amounted to by ratio of the conditions precedent for paying the said pay scale. However on 05.09.2003, the petitioner was granted the said pay scale which he continued to enjoy during his service tenure and retired on 31.10.2019. However, vide impugned order dated 17.02.2020, the respondents sought to recover an amount an amount of Rs.5,03,153/-.

6. Apex Court in the case of **Raffiq Masih (supra)** 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).

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- (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. In view of above, the impugned recovery is quashed. However, liberty is granted to the respondents to re-fix the pension of the petitioner for future, in accordance with law. The amount already recovered be refunded back alongwith the interest @ 8% per annum.

8. Petition stands disposed off.

(PANKAJ JAIN)
JUDGE

04.05.2023
Dinesh

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No