

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

226

CWP-11608 of 2019
Date of Decision:24.02.2023

Surinder Mohan

....Petitioner

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. H. S. Saini, Advocate,
for petitioner.

Mr. Vikas Chatrath, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing of the impugned order dated 14.01.2019 (Annexure P-6) to the extent whereby the recovery of an amount of Rs.3,12,799/- from the DCRG and the order dated Nil (Annexure P-7) whereby the recovery of an amount of Rs.17,460/- from the arrears of pension has been effected after about 4 years of the date of the retirement of the petitioner.

Learned counsel for the petitioner has submitted that the petitioner had retired as Assistant Lineman from the respondent-Corporation on 31.01.2015 and the petitioner falls in Group C (Class III). He submitted that after his retirement, the respondent Corporation refixed the pay of the

petitioner after giving him the benefit of time bound scale of sixteen years of service by treating him to have inducted as ALM during the time when he was in service and thereafter his pension was refixed vide Annexure P-2 dated 04.03.2016 and was paid. He submitted that however no other retiral benefits were granted to the petitioner. Thereafter, suddenly after about four years of the aforesaid fixation, the respondents have now recovered an amount of Rs.3,12,799/- from the gratuity of the petitioner vide Annexure P-6 on 14.01.2019. He submitted that once the respondents themselves have refixed the pension of the petitioner after his retirement and he has been paid provisional pension on the basis of the refixation and thereafter it has been withdrawn by them unilaterally without even affording an opportunity of hearing to the petitioner then the recovery could not have been made from the petitioner in view of the judgment of the Supreme Court in in view of the ratio of the judgment of the State of Punjab and others versus Rafiq Masih (White Washer) etc. 2015 (4) SCC 334.

Learned counsel for the petitioner submitted that the scope of the present petition is only to the extent of challenging the recovery and grant of interest on the delayed payment and he is not challenging the action of the respondents again refixing the pay after withdrawing the benefit of increment which was granted him after retirement as per Annexure P-2. He submitted that as of now the following payments have been made to the petitioner:-

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|----------------------------------|---|-------------|
| 1.Provisional pension | : | 08.06.2017; |
| 2.Arrears of provisional pension | : | 01.07.2017; |
| 3.Arrears of regular pension | : | 02.04.2019; |

4. Leave encashment (two installments) (1st) :	09.04.2015(in time)
(2 nd) :	23.11.2016
5. GPF :	08.03.2016
6. Balance of the gratuity :	19.03.2019

He submitted that now there has been a recovery from his gratuity to the tune of Rs.3,12,799/- and of an amount of Rs.17,460/- from the arrears of his pension which could not have been recovered from the petitioner after his retirement because it was impermissible to have recovered in view of the judgment of the Supreme Court in *Rafiq Masih's* case (supra).

On the other hand, Mr. Vikas Chatrath, learned counsel appearing on behalf of the respondents submitted that in fact after his retirement, the petitioner had made a request for the purpose of treating him to have been inducted him as an ALM and thereafter he was treated to have been inducted as ALM during his service and his pension for the purpose of time bound promotional scale and therefore immediately after his retirement his pension was refixed and he was given the aforesaid increments but thereafter when an audit objection was raised then in the year 2019 the same was withdrawn and the recovery was effected from him and the remaining gratuity was paid to him. He submitted that since it was on the request of the petitioner that a time bound promotional scale was given to him, that the respondent Corporation was within its rights to have recovered the aforesaid amount. He further submitted that so far as the GPF is concerned, the same was paid on 08.03.2016 which carries its own interest from the GPF department and therefore the petitioner is not entitled for the interest in that regard as well.

I have heard the learned counsels for the parties.

The aforesaid dates are not in dispute. Admittedly, the petitioner was in Group C (Class III) at the time of his retirement, i.e. on 31.01.2015. He has been granted benefit of time bound promotional scale after his retirement and thereafter it was withdrawn. Therefore, as per the judgment of the Hon'ble Supreme Court in *Rafiq Masih*'s case (supra) recovery after retirement would not be permissible especially in view of the fact that the petitioner was in Group C (Class III). The justification given by learned counsel for the respondents that it was on his own request that the said benefit of increments was given after his retirement cannot become a ground for denial of interest to the petitioner and particularly in view of the fact that there is no such request of the petitioner which has been attached alongwith the reply filed by the respondents.

Apart from the above, before recovering the amount or before withdrawing the aforesaid benefit granted to him, no opportunity of hearing was given to the petitioner and therefore it was also violative of principles of natural justice. The petitioner has only confined the scope of the present petition to the extent of impermissibility of recovery of the amount and grant of interest, but he has not pressed with regard to the action of the respondents in reducing his pay and consequently reduction in his pension.

Apart from the above, this Court is of the view that since the petitioner has retired as an Assistant Lineman, and he has been granted benefit and thereafter recovery has been effected after a period of four years, the case of the petitioner would also be covered in Clause (v) of para No.18 of the

judgment of *Rafiq Masih*'s case because this Court is of the view that it will be unjust and inequitable and very harsh to recover the amount from him.

From the aforesaid facts and circumstances, it is clear that the action of the respondents in recovering the aforesaid amount from the gratuity and the arrears of pension was illegal in view of the judgment of the Hon'ble Supreme Court in *Rafiq Masih*'s case. The relevant portion of the same is reproduced as under:-

“18. 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 hereinabove, 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 the 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.”

In view of the above, the present petition is allowed. The recovery made by the respondent Corporation from the gratuity and the arrears of pension are liable to be refunded back to the petitioner alongwith the interest @ 6% per annum. So far as the interest on the delayed payment is concerned, the petitioner will also be entitled for the interest @6% per annum on the delayed payment as aforesaid. So far as the interest on GPF is concerned, in case the payment of GPF was made alongwith the interest, then interest may not be paid on the GPF that in case it did not accompany the element of interest at the time of payment, then the petitioner shall be entitled for interest on GPF as well. The interest shall be calculated @6% per annum from the date of accrual till the date of disbursement. The entire exercise shall be carried out by the respondent Corporation within a period of four months from today and after calculation the payment on account of above shall be paid to the petitioner.

(JASGURPREET SINGH PURI)
JUDGE

February 24, 2023
dinesh

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