IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

252 **CWP-11131 of 2020**
Date of Decision:09.02.2023

Balkar Singh

....Petitioner

Versus

Punjab State Power Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present: Mr. Virinder Kumar, Advocate,
for petitioner.

Mr. Sahil Sharma, Advocate,
for the respondents.

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JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of prohibition restraining the respondents from making/effecting recovery from the pension of the petitioner in view of the impugned revised pension pay order dated 09.03.2020 (Annexure P-4), with a further prayer to refund the amount of recovery if any already made in pursuance of the aforesaid impugned order dated 09.03.2020 (Annexure P-4).

Learned counsel for the petitioner has submitted that the petitioner retired on 30.11.2010 as Lineman from the respondent Corporation. At the time of retirement, his pension was fixed vide Annexure P-1 in the year 2011, i.e. on 25.01.2011 and he was being given pension according to the fixation of his pension. Thereafter, on 09.01.2013 vide Annexure P-2, his pension was revised which was made at the amount of Rs.11,866/- only as basic pension and thereafter he was getting his pension on the basis of the revised pension which was calculated in accordance with vide Annexure P-2. However, suddenly vide Annexure P-4 which is dated 09.03.2020, i.e. after the period of seven years, the revision of pension which was granted to the petitioner vide Annexure P-2 was withdrawn and his pension was reduced. He submitted that the revision of pension vide Annexure P-2 was given by the respondent Corporation on their own and was not result of any fraud or misrepresentation by the petitioner and thereafter without issuance of any notice to the petitioner and suddenly the pension was reduced vide Annexure P-4. He submitted that the action of the respondent was not only contrary to the principles of natural justice whereby the pension has been reduced without even issuing notice but it was also contrary to the law laid down by the Hon'ble Supreme Court of India in **State of Punjab and others Rafiq Masih** 2015 (4) SCC 334 since the petitioner was in category-C Lineman and he had already retired and therefore recovery from him is impermissible. He submitted that after the passing of the revised pension pay order dated 09.03.2020 (Annexure P-4), some amount was recovered from the pension of the petitioner but thereafter in the present petition an interim order was passed on 04.08.2020 whereby the impugned order (Annexure P-4) was stayed for recovery.

Learned counsel for the petitioner has further submitted that the petitioner has got two-fold grievances. Firstly, the pension of the petitioner could not have been reduced unilaterally without even affording opportunity of hearing to him and secondly recovery could not have been made from the petitioner in view of the aforesaid settled law. He submitted that so far as the first grievance is concerned, he may be granted liberty to approach the respondent Corporation by filing a detailed representation and necessary directions be issued to the Corporation to decide the same in accordance with law within time bound period. So far as the second prayer is concerned pertaining to recovery, the same cannot be done and therefore the action of the respondent recovering the amount from the pension of the petitioner may be set aside.

On the other hand, Mr. Sahil Sharma, learned counsel appearing on behalf of the respondents submitted that it was within the rights of the respondent Corporation to have reduced the pension since the same was wrongly fixed vide Annexure P-2. He further submitted that so far as the recovery aspect is concerned, the judgment of ***Rafiq Masih*** (supra) will not be applicable in the present case because the petitioner at the time of his retirement had given an undertaking that in case excess payment is made, then the petitioner will be bound to refund the same to the Board and therefore the judgment of the Supreme Court in **High Court of Punjab and Haryana versus Jagdev Singh** (2016) 14 SCC 267 is applicable in the present case.

I have heard the learned counsels for the parties.

So far as the first grievance of the petitioner with regard to wrongful reduction of pension is concerned, learned counsel for the petitioner has already made submission that he will approach the respondent Corporation by filing a detailed representation especially by taking a plea that principles of natural justice have been violated and that the pension of the petitioner could not have been reduced at all. Therefore, so far as the first grievance of the petitioner is concerned, the petitioner shall be at liberty to approach the respondent Corporation for raising the aforesaid grievance in accordance with law. In case any such representation is filed by the petitioner to the respondent Corporation within a period of two months from today, then the same shall be considered by respondent No. 3/any other competent authority within a period of three months from the date of receipt of the representation and thereafter a speaking order shall be passed either accepting or rejecting the grievance/prayer of the petitioner with regard to the aforesaid prayer and the order shall be communicated to the petitioner. The petitioner shall thereafter be at liberty to challenge the same before appropriate forum/Court in accordance with law.

So far as the grievance pertaining to recovery from the petitioner is concerned, a perusal of Annexure P-1 would show that after the retirement of the petitioner on 30.11.2010 his pension was fixed by the respondent Corporation on their own and thereafter vide Annexure P-2 on 09.01.2013 again the pension was revised by the respondent Corporation on their own. However, vide impugned Annexure P-4 after the period of seven years, i.e. 09.03.2020 the pension was reduced without affording any opportunity of hearing to the petitioner.

It is not a case of either of the parties that there was an element of fraud or misrepresentation at the hands of the petitioner, but the argument which has been raised by learned counsel for the respondent is that it was within the rights of the Corporation to have reduced it and since the petitioner has given an undertaking at the time of his retirement vide Annexure R-1, the judgment of the Supreme Court in ***Rafiq Masih*** (supra) will not apply.

The petitioner retired on 30.11.2010 and he falls in category-C being Lineman. The recovery is sought to be effected from the petitioner after his retirement and after giving him benefit after retirement. The Hon'ble Supreme Court of India in ***Rafiq Masih*** (supra) had passed various directions which are 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:-
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> (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."

So far as the ground which has been taken by learned counsel for the respondents that there was an undertaking given by the petitioner vide Annexure R-1 and his case will not be recovered by ***Rafiq Masih*** (supra) but with the covered by ***Jagdev Singh*** (supra) is concerned, the same appears to be totally unsustainable. A perusal of the undertaking given by the petitioner at the time of his retirement Annexure R-1, would show that the aforesaid undertaking was given by the petitioner at the time of his retirement in the year 2010 and that pertains to the undertaking that in case at the time of giving of the pension some excess payment is being made then the petitioner would be bound to get the same recovered. However, in the facts and circumstances of the present case, there is no dispute with regard to the fixation of pension at initial stage and the petitioner was getting pension after his retirement for about ten years. It was thereafter only vide Annexure P-2 that the respondent Corporation on their own enhanced the pension of the petitioner and thereafter on their own reduced the same vide Annexure P-4. At the time of revision of pension, no such undertaking was given by the petitioner. The present case of the petitioner would not be covered by the judgment of the Supreme Court in ***Jagdev Singh***'s case (supra) because in that case at the time of the service of the employees, pay revision was effected in accordance with rules, i.e. Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001 and when benefit was to be given under those rules, the officer was required to submit undertaking under those rules that when any excess amount is to be found, then they will pay the same. It was in the context of those circumstances that the Hon'ble Supreme Court held that since the employees were put on notice in terms of the Rules, the judgment of in ***Rafiq Masih*** (supra) is not applicable. However, the facts of the present case are totally distinguishable from the aforesaid judgment in ***Jagdev Singh***'s case (supra).

This Court is satisfied that the case of the petitioner is fully covered by the judgment of the Supreme Court in ***Rafiq Masih***'s case (supra). Consequently, the respondent Corporation cannot recover the amount from the petitioner who retired in the year 2010 from category-C. Therefore, the action of recovering any amount paid to the petitioner in pursuance of Annexure P-4 is set aside. The respondent Corporation shall not be entitled to recover any amount of pension which was given to the petitioner in accordance with Annexure P-2. The recovery, if any made from the petitioner, shall be refunded back to the petitioner alongwith interest @6% within a period of three months from today.

Accordingly, the present petition is partly allowed to the above extent.

(JASGURPREET SINGH PURI)
JUDGE

February 09, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No