

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218

CWP-14624 of 2017

Date of Decision:04.05.2023

Laxman Parsad

....Petitioner

Versus

Punjab State Power Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. HPS Ishar, Advocate,
for the petitioner.

Mr. Abhilaksh Grover, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present 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 23.12.2016 (Annexure P-11) whereby recovery of Rs.74,825/- has been ordered against the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner had retired on 31.03.2016 as Desk Controller from the respondent-Corporation and after his retirement the recovery is sought to be effected vide Annexure P-11 on the ground that some increments were given to the petitioner while he was in service in the year 2005. He submitted that the increments if any which were given to the petitioner were not because of

any kind of fraud or mis-representation on behalf of the petitioner but it was given by the respondent-Corporation, on their own, during the service of the petitioner and the post of petitioner falls under Class-III post. He submitted that after the retirement of the petitioner, no such recovery could not have been effected in view of the authoritative judgment of the Hon'ble Supreme Court in **State of Punjab and others versus Rafiq Masih (White Washer) etc.** 2015 (4) SCC 334.

3. On the other hand, Mr. Abhilaksh Grover, learned counsel appearing on behalf of the respondents submitted that it is correct that the recovery of the aforesaid amount of Rs.74,825/- is sought to be effected from the petitioner on the ground that while he was in service he was granted some promotional increments on 05.06.2005 and after the retirement once the calculation was made it was found that he got the increments to which he was not entitled and therefore the recovery of the aforesaid amount is sought to be effected from the petitioner.

4. I have heard the learned counsel for the parties.

5. It is a case where the petitioner retired on 31.03.2016 and according to learned counsel for the parties, the petitioner falls in Class-III. The reason for seeking recovery of Rs.74,825/- from the petitioner was that about ten years ago before the retirement i.e. in the year 2005 he was granted some advanced promotional increment which is now sought to be recovered after his retirement. The law in this regard pertaining to recovery is no longer *res integra*. The Hon'ble Supreme Court in ***Rafiq Masih***'s case (supra) observed that after the retirement no such recovery can be effected.

The relevant portion of the aforesaid judgment 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.”*

6. After considering the facts and circumstances of the present case, this Court is of the view that the case of the petitioner is squarely covered by clauses (i) and (ii) as aforesaid.

7. In view of the above, the present petition is allowed. The

impunged order dated 23.12.2016 (Annexure P-11) whereby recovery is sought to be effected from the petitioner is hereby set-aside and quashed.

(JASGURPREET SINGH PURI)
JUDGE

May 04, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No