

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18587-2018 (O&M)

Decided on 15.11.2023

Jai Kishan Rathi

... Petitioner

VS.

UHBVNL & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vijay Singh Rathee, Advocate for
Mr. BS Rathee, Advocate for the petitioner

Ms. Aditi Sharma, Advocate for
Mr. CS Bakshi, Advocate for the respondents

Sandeep Moudgil, J.

The petitioner has filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of certiorari for quashing the impugned notice dated 04.12.2017 (Annexure P10) and the order dated 18.11.2016 (Annexure P5) whereby the respondent-Nigam has sought to recover Rs.4,40,818/- from the petitioner and also has withdrawn the benefit of stepping up granted to him w.e.f. 01.01.1996 and 01.10.2005, respectively at par with his junior employee with a further direction to restore the said benefit along with interest.

Learned counsel for the petitioner stakes his claim on two-fronts, firstly, the recovery of Rs.4,40,818/- on account of withdrawal of 1st and 2nd ACP to the petitioner w.e.f. 01.01.1996 and 01.10.2005 respectively, is in violation of instructions and ratio of **State of Punjab and Others Vs. Rafiq Masih and Others 2015(2) SCC 608**. He submits that the petitioner had already retired on 31.01.2017 and after his retirement, a notice regarding

recovery was issued for the first time on 04.12.2017 and there is delay in releasing the retiral dues of the petitioner which is also to be in violation of instructions of the Department.

It is further averred that there is no allegation of fraud or overt act at the instance of the petitioner. He then argued that the benefit granted to the petitioner was withdrawn vide order dated 18.11.2016 on the basis of the instructions dated 13.01.2010 withdrawing the benefit granted vide order dated 27.03.2008, by applying the said instructions retrospectively.

On the other hand, on the basis of the averments made in the written statement filed by the respondents, Ms. Aditi Sharma, Advocate submitted that the pay of the petitioner was stepped up with his junior Sh. Balbir Singh MR by granting 1st ACP w.e.f. 01.01.1996 and 2nd ACP w.e.f. 01.10.2005 which was found to be not correct as per instructions of the Nigam and as such, recovery was made from him and the Chief Engineer (OP) UHBVN Rohtak has withdrawn the stepping up order vide order dated 18.11.2016.

Heard learned counsel for the parties and gone through record.

It cannot be denied that it was on account of clerical mistake on the part of the respondents that the excess amount has been paid to the petitioner on account of wrong fixation and recovery has been sought to be made after withdrawing the benefit of stepping up i.e. 1st and 2nd ACP w.e.f. 01.01.1996 and 01.10.2005 at par with his juniors.

This Court, however, cannot be oblivious of the fact that the orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where

such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made.

At this stage, it would be apt to note the following situations of hardship, as postulated by the Supreme Court in **Rafiq Masih's** case (supra), governing the employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement and recoveries by the employers therefrom, 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 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.*

The petitioner is admittedly a Class-III employee having retired from the post of Commercial Assistant w.e.f. 31.01.2017 and as per policy dated 23.02.2016 (Annexure P11) and 20.01.2017 (Annexure P14), no

recovery can be effected. It is also pertinent to note that the case of the petitioner falls within the hardships as formulated in **Rafiq Masih's** case (supra). That apart, the action of the respondents in effecting recovery of Rs.4,40,818/- cannot be held to be justified inasmuch as the respondents have withdrawn the benefit which was granted to him on 27.03.2008 by applying the instructions dated 13.01.2010 and as such, the instructions could not have been applied retrospectively.

Accordingly and in view of the above discussion, this writ petition is allowed and the impugned order dated 04.12.2017 (Annexure P10) and 18.11.2016 (Annexure P5) are hereby quashed and the respondents are directed not to withdraw the benefit of stepping up (1st and 2nd ACP w.e.f. 01.01.1996 and 01.10.2005) in respect of the petitioner and also they shall refund Rs.4,40,818/- towards withdrawing the benefit of stepping up, along with interest @ 12% p.a.. It is further directed that the respondents shall grant further interest @ 12% p.a. as per policy dated 20.02.2002 to the petitioner on the retiral benefits from the date of accrual until actual payment is made.

Let the needful be done within a period of two months from the date of receipt of certified copy of this order failing which the petitioner shall be entitled to further interest @ 18% p.a.

Ordered accordingly.

15.11.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No