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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-24444-2016

Date of Decision: 08.02.2023

Jasbir Singh

..... Petitioner

Versus

Punjab State Power Corporation Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. V.K. Shukla, Advocate,
for the petitioner.

Mr. G.S. Ghuman, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Article 226 of the Constitution of India for the issuance of a writ, order, direction specially in the nature of *certiorari/mandamus* declaring the action of the respondents in making/effecting recovery of Rs.1,53,674/- from the monthly pension of the petitioner @ Rs.12,000/- per month started from the month of October, 2016 in view of the Audit Note (Annexure P-1) and also recovery of Rs.82,882/- made from the Gratuity of the petitioner in view of Gratuity Pay Order dated 02.11.2015 (Annexure P-2) without serving any Show Cause Notice or affording any opportunity of being heard and that too after the retirement of the petitioner is absolutely wrong, illegal, unlawful, unjust,

unfair, unconstitutional and against the *Principles of Natural Justice* and therefore, to quash the impugned Audit Note (Anneure P-1) and the alleged recovery on the basis of the same and Gratuity Pay Order (Annexure P-2). With a further prayer to direct the respondents to refund the amount of recovery made from the petitioner as mentioned above.

It has been submitted by learned counsel for the petitioner that the petitioner was working as Driver in the respondent-Corporation and he retired on 31.08.2015 as a Driver, which falls in the category of Group 'D'. He further submitted that during his service period, a disciplinary proceedings were initiated against him wherein he was imposed punishment of stoppage of one increment without cumulative effect and his absence period was also treated as dies-non. Thereafter, an appeal was filed by the petitioner before the Appellate Authority and the Appellate Authority vide Annexure P-4 dated 22.01.2014 modified the order of punishment and directed the absence of the petitioner from 15.11.2011 to 02.04.2012 be regularized as leave of kind due and the rest of the punishment was sustained. He further submitted that in this way only stoppage of one increment without cumulative effect was sustained. However, after a period of 9 months, the Appellate Authority reviewed the aforesaid order on its own without even issuing notice to the petitioner and vide Annexure R-2/1 dated 29.09.2014, directed that the aforesaid period be treated as non-duty period instead of leave of kind due. He also submitted that the aforesaid order which was passed in review was totally illegal and violation of regulation because the period of limitation for reviewing was 6 months and it was reviewed after a period of 9 months and apart from that it was

violative of *Principles of Natural Justice* because it was passed at the back of the petitioner and not even conveyed to him and neither any notice nor any hearing was granted to the petitioner, and therefore, it was void *ab initio*. He further submitted that be that as it may, once the petitioner has already retired from service on 31.08.2015 and he falls in the Category 'D', it was not permissible for the respondents-Corporation to have recovered the amount of salary which was paid to him from 15.11.2011 to 02.04.2012 by way of deducting the same from the pension of the petitioner. He has referred to the judgment passed by the Hon'ble Supreme Court's in “**State of Punjab and others Vs. Rafiq Masih**”, 2015(4) SCC 334 and submitted that the case of the petitioner is squarely covered by the aforesaid judgment since the petitioner being Class 'D' category employee has already retired and recovery was from a retired employee which was not permissible. He also submitted that it is not a case of the respondents-Corporation that they had given the salary for the aforesaid period by way of any fraud or misrepresentation on the part of the petitioner but they had given the salary of their own and after the retirement it was not permissible for them to have sought recovery from the petitioner. He further submitted that by way of interim order passed by this Court on 28.11.2016, the recovery has already been stayed and as of date, no recovery has been effected from the petitioner.

On the other hand, Mr. G.S. Ghuman, learned counsel for the respondents-Corporation has submitted that the petitioner has not challenged the order (Annexure R-2/1) which was passed in review. He further submitted that the retaining of aforesaid amount by the petitioner in

violation of the orders passed by the Appellate Authority in review was not permitted, and therefore, the present petition is liable to be dismissed.

I have heard the learned counsel for the parties.

The short issue involved in the present case is as to whether the respondents-Corporation was entitled to recover an amount of salary which was granted to the petitioner for a period of 15.11.2011 to 02.04.2012 whereby earlier the Appellate Authority had directed that the same be treated as leave of kind due but thereafter on its own by way of review modified the order by treating the aforesaid period as 'period to be treated as non-duty period'. The petitioner did not receive the aforesaid amount because of his own fraud or misrepresentation but paid by the respondents themselves on the basis of their own order. However, the petitioner has already retired on 31.08.2015 and admittedly, after his retirement the said recovery is sought to be effected from the petitioner. This Court is of the view that the case of the petitioner is squarely covered by the judgment of Hon'ble Supreme Court passed in *State of Punjab and others Vs. Rafiq Masih's case (supra)* wherein the recovery is impermissible from the person, who has retired and who falls in the Category 'C' & 'D'. Admittedly the amount is sought to be recovered after retirement and no action was taken by the respondents to recover amount, if any, during his service even after order was reviewed/modified.

Consequently, the present petition is allowed. The impugned order Annexure P-1 by which the recovery is sought to be made from the petitioner and also the calculation made vide Annexure P-2 for recovery of Rs.82,882/- made from the Gratuity of the petitioner in view of Gratuity Pay

Order dated 02.11.2015 (Annexure P-2) are hereby set aside and quashed. It is directed that no recovery of Rs.1,53,674/-, shall be effected from the petitioner. The recovery, if any, recovered from the petitioner shall be refunded back to the petitioner within a period of three months from today along with interest @ 6% per annum.

08.02.2023

(JASGURPREET SINGH PURI)

JUDGE

Bhumika

1. Whether speaking/reasoned:

Yes/No
2. Whether reportable:

Yes/No