IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223 **CWP-26509 of 2016**
Date of Decision:19.04.2023

Pardeep Kumar Sanon

....Petitioner(s)

Versus

Punjab State Power Corporation Limited and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present: Mr. Aditya Dassaur, Advocate,
for the petitioner.

Mr. H. S. Ghumman, Advocate,
for the respondents.

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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 *mandamus* directing the respondents to refund the amount of Rs.1,40,580/- which has been unlawfully deducted from the pensionary benefits of the petitioner.

Learned counsel for the petitioner submitted that the petitioner was working in the respondent-Corporation as Steno-Typist which falls in the Category-C (Class-III) and he retired on 30.09.2015 after attaining the age of superannuation. He submitted that in the year 2013 which was about two years before the retirement of the petitioner, the respondent-Corporation got a clarification from the accounts department on the ground that when the petitioner was earlier granted some time bound promotion increments for a period from 1994 to 2007 whether the same could have been granted to him or not and thereafter when the petitioner retired then from his pensionary benefits an amount of Rs.1,40,580/- was deducted on the ground that for a period from 1994 to 2007 he was wrongly granted the time bound promotion increments and since the increment was not in accordance with law and therefore the same was directed to recover from the pensionary benefits of the petitioner.

Learned counsel for the petitioner submitted that it is a settled law that after the retirement of the petitioner no such recovery can be made especially when there is no allegation of any fraud or mis-representation etc. by the petitioner and it is a case where first benefit was granted number of years ago prior to his retirement by the respondent-Corporation themselves and it was not because of any mis-representation etc. by the petitioner. He further submitted that even otherwise also the case of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court in **State of Punjab and others versus Rafiq Masih (White Washer) etc.** 2015 (4) SCC 334 since the petitioner was working and retired as Category-C (Class-III) employee and recovery was effected later on. He submitted that the respondent-Corporation be directed to refund the aforesaid amount alongwith the interest to the petitioner.

On the other hand, Mr. H. S. Ghumman, learned counsel appearing on behalf of the respondents submitted that in fact the process for determining and ascertaining as to whether the petitioner was granted the time bound promotion increments for the period from 1994 to 2007, in accordance with law or not, a clarification was sought from the accounts department but the matter could not be finalized pertaining to the ascertainment and at the time of his retirement it was ascertained that he was wrongly granted the aforesaid benefit between the aforesaid period and that was the reason as to why from his pensionary benefits there was a recovery of Rs.1,40,580/-. He submitted that since the process had started prior to his retirement, the petitioner is not entitled for the refund of the amount.

I have heard the learned counsel for the parties.

The facts of the present case are clear and simple. The petitioner was working as Steno-Typist and retired as such and therefore as per learned counsel for the parties, he was under the Category-C (Class-III) and retired on 30.09.2015. After his retirement, from his pensionary benefits an amount was recovered on the ground that for the period pertaining to 1994 to 2007 some benefits were granted to him pertaining to the time bound promotion increment which now according to the Corporation was erroneously given. There was no element of fraud or mis-representation etc. by the petitioner and the aforesaid benefit was granted by the Corporation itself. Therefore, it is clear that the case of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court in ***Rafiq Masih***'s case (supra). 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:*
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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 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."

The case of the petitioner falls in clause (i) and (ii). The justification putforth by learned counsel for the respondents is not proper and it is not in accordance with law whereas on the other hand, the case of the petitioner is covered by the aforesaid judgmnet in ***Rafiq Masih***'s case (supra).

In view of the aforesaid position, the present petition is allowed. The petitioner is entitled for the refund of the aforesaid amount of Rs.1,40,580/- alongwith interest @ 6% per annum. The respondent-Corporation is directed to calculate the interest from the date of the recovery made from the petitioner and pay to the petitioner the aforesaid amount alongwith interest within a period of three months from today.

In case the aforesaid amount is not paid to the petitioner within the aforesaid period of three months from today, then the petitioner shall be entitled for a future rate of interest @ 9% per annum instead of 6% per annum.

The petitioner shall also be entitled for costs which are assessed as Rs.10,000/- which shall also be paid to the petitioner within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

April 19, 2023
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Whether speaking : Yes/No
Whether reportable : Yes/No