226

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

***

CWP-25994-2018 (O&M)
Date of Decision: 17.02.2023

Malkiat Singh

..... Petitioner

Versus

Punjab State Power Corporation Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Narinder Sharma, Advocate, for the petitioner.

Mr. Parminder Singh, Advocate, for the respondents.

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JASGURPREET SINGH PURI, J. (ORAL)

CM-2828-CWP-2023

For the reasons mentioned in the application, the same is allowed and the replication filed on behalf of the applicant/petitioner along with Annexure P-6 is taken on record.

CWP-25994-2018

The present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of *certiorari* or any other writ, order or direction to set aside the impugned order/letter dated 14.07.2017 (Annexure P-2) and further directing the respondents to refund the recovered amount Rs.3,82,851/- along with interest @ 18% per annum which has been recovered from the salary and Gratuity/Pension of the petitioner without giving any Show Cause Notice and opportunity of hearing which is arbitrary, illegal, unjustified and against the *Principles of Natural Justice*.

Learned counsel for the petitioner has submitted that the petitioner had retired from the respondents-Corporation as LDC which is Class III (Group 'C' Category) and while he was in service, he was granted Time Bound Selection Grade of 9 years and his pay was fixed accordingly. The said benefit was given in the year 2011 w.e.f. 1995 thereafter, he kept on drawing the salary on the basis of the salary fixed by the Corporation itself. However, in the year 2013, there was an audit objection and thereafter, the aforesaid benefit granted to him was withdrawn and his pay was also refixed after withdrawing the same and thereafter, the respondents-Corporation started recovering the amount which was given to him as aforesaid on the higher pay. After that the petitioner retired on 31.12.2016 and the remaining amount was recovered form his Gratuity after his retirement.

Learned counsel for the petitioner further submitted that it is not the case of the respondents-Corporation that there was any fraud or misrepresentation on the part of the petitioner that the aforesaid benefit of Time Bound Selection Grade was granted by the Corporation but they had granted the same to the petitioner of their own and subsequently on the basis of the audit objection, they had withdrawn the same and the petitioner confines the scope of the present petition only to the extent of recovery which was effected from the petitioner, since the same cannot be done in view of the law laid down by the Hon'ble Supreme Court in "***State of***

Punjab and others Vs. Rafiq Masih (White Washer) and others”, ***2015(4) SCC 334***, especially in view of the fact that the petitioner retired as LDC, which falls in the category of Group 'C', and therefore, such a recovery was impermissible. He further submitted that the amount which has been recovered from the petitioner is liable to be refunded back to the petitioner along with interest.

On the other hand, Mr. Parminder Singh, learned counsel appearing on behalf of the respondents-Corporation submitted that the petitioner was granted the Time Bound Selection Grade in the year 2011 and thereafter, his pay was fixed and he kept on drawing the benefit of the aforesaid Time Bound Selection Grade but there was a condition while making an order of the aforesaid grant that these orders can be amended at any time and in case there is an amendment or cancellation then the Board reserves its right to deduct the payment without giving any notice. He further submitted that therefore, the respondents-Corporation was within its rights to have recovered the aforesaid amount.

I have heard the learned counsel for the parties.

It is a case where the petitioner had already retired on 31.12.2016. While he was in service, he was granted the benefit of Time Bound Selection Grade in the year 2011 w.e.f. 1995 and his pay was accordingly fixed, the said benefit was granted to the petitioner by the respondents-Corporation on their own and it is not a case of the respondents-Corporation that there was any misrepresentation or fraud committed by the petitioner. Thereafter, due to the audit objection, the Corporation had withdrawn the aforesaid benefit of the petitioner. The scope of the present petition is only to the extent of recovery which was made from the petitioner from his salary while he was in service and also from his Gratuity after his retirement.

The law with regard to recovery in such circumstances has been laid down by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)*** , the relevant part is produced as under:-

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 herein above, 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 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."*

Admittedly, the petitioner belonged to Category 'C' and there is no allegation of any fraud or misrepresentation from him and therefore, no recovery could have been effected from the petitioner especially when he falls in Category 'C', and therefore, the recovery from him is impermissible. So far as the argument raised by learned counsel for the respondents-Corporation that one condition was imposed at the time when 9 years Time Bound Selection Grade was granted to the petitioner that the orders can be amended and the Board reserves its rights to deduct the payment without giving any notice is concerned, the same will not effect the rights of the petitioner while challenging the recovery from him. It is not a case of the respondents-Corporation when at the time when he was granted the benefit of aforesaid Time Bound Selection Grade that he has given any undertaking or he has furnished any affidavit that an amount may be recovered from him, and therefore, the judgment of the Hon'ble Supreme Court passed in "***High Court of Punjab & Haryana and others Vs. Jagdev Singh***" ***2016(14) SCC 267*** will not apply in the present case whereas the ratio of judgment of Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)*** will apply in the present case.

Consequently, the present petition is allowed. The respondents-Corporation is directed to refund the amount which has been deducted from the petitioner within a period of four months from today along with interest

@ 6% per annum. In case, the aforesaid amount is not paid within a period of four months, then the petitioner shall be entitled for further interest @ 9% per annum.

17.02.2023 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No