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

223

**CWP-29233 of 2017
Date of Decision:17.02.2023**

Kamal Singh

.... Petitioner

Versus

Punjab State Power Corporation Ltd and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

****

Present: Mr. Ashish Grover, Advocate,
for petitioner.

Mr. Abhilaiksh Grover, Advocate,
for the respondents.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to release the due pension and pensionary benefits as per his entitlement and refund the sum of Rs.7,95,518/- which has been recovered from his gratuity.

Learned counsel for the petitioner has submitted that the petitioner retired as a Lineman from the respondent Corporation on 30.04.2017 and he falls in Category C (Group C). He submitted that only grievance which the petitioner is pressing in the present petition is that the aforesaid amount of Rs.7,95,518/- has been wrongly recovered from the petitioner and the same be refunded back to him. He submitted that neither any notice was served upon the petitioner before effecting any recovery nor any reason was given as to why his pay was re-fixed on 27.03.2017. He submitted that he had already withdrawn an amount while he was in service on the basis of pay fixation done by the respondent Corporation themselves and there was no fraud or misrepresentation by the petitioner and after the petitioner retired who falls in Category C (Group C), no recovery can be effected from the petitioner in view of the ratio of the judgment of the **State of Punjab and others versus Rafiq Masih (White Washer), etc.** 2015 (4) SCC 334.

On the other hand, Mr. Abhilaksh Grover, learned counsel appearing on behalf of the respondents has submitted that since the pay of the petitioner was refixed in accordance with law and the prevailing rules, the respondent Corporation had right to recover the amount because the re-fixation was done prior to his retirement.

I have heard the learned counsels for the parties.

The petitioner was working as a Lineman which according to learned counsels for the parties falls in Category C (Group C) and he retired on 30.04.2017. The recovery has been effected vide Annexure P-4 on 31.10.2017 which is much after his retirement. It is not the case of the respondents that there was any fraud or misrepresentation on the part of the petitioner when his pay was refixed nor is the case of the respondents that the petitioner had given any undertaking at the time of grant of benefit to him. However, admittedly the recovery has been effected after his retirement which is impermissible in view of the judgment of the ***Rafiq Masih****'s* case (supra) since the petitioner falls in Category C (Group C). 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."

In view of the aforesaid facts and circumstances, this Court is of the view that the case of the petitioner is squarely covered by the judgment of the Supreme Court in ***Rafiq Masih****'s* case (supra).

Consequently, the present petition is allowed. The respondent Corporation is directed to refund back the aforesaid amount of Rs. 7,95,518/- to the petitioner alongwith interest @ 6% per annum. The said amount shall be refunded back to the petitioner within a period of four months from today.

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

(JASGURPREET SINGH PURI)
JUDGE

February 17, 2023

dinesh	Whether speaking	:	Yes/No
	Whether reportable	:	Yes/No