

2023:PHHC:068453

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

208

CWP No.29521 of 2017

Date of decision: 11.05.2023

MOHINDER PAL

...Petitioner

Versus

HARYANA POWER GENERATION CORP LTD AND ORS.

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Krishan Singh, Advocate
for the petitioner.

Mr. M.S. Sidhu, Advocate
for the respondents.

RAJ MOHAN SINGH , J.(ORAL)

The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari for quashing the order dated 20.07.2014 passed by the respondent No.4 thereby withdrawing the advance increment granted to the petitioner. At the time of fixation of the revised pay scale, increment was withdrawn and as a consequence of the same an amount of Rs.1,41,831/- has been recovered from the petitioner. The petitioner has also prayed for the issuance of an appropriate writ in the nature of mandamus directing the respondents to refund the aforesaid amount.

The petitioner was appointed as AFM on work charge basis in the year 1981. The services of the petitioner were regularized in the year 1992 as T-Mate. On 01.04.1989, the petitioner was granted three advance increments w.e.f. 01.04.1989 keeping in view his outstanding performance and thereafter he was promoted to the post of Technician-II in the year 2008. Thereafter the pay of the petitioner was fixed thereby raising the same from 786 to 822 and next increment was granted to the petitioner after absorbing three advance increments w.e.f. 01.11.1992. When pay of the petitioner was fixed/re-fixed on 01.07.2014, the respondent department passed an order dated 20.07.2014 without giving any notice to the petitioner that there was a wrong fixation of pay for grant of advance increments amounting to Rs.1,41,831/- and the petitioner was directed to deposit the same.

The grievance of the petitioner is that the advance increments were granted to the petitioner w.e.f. 01.04.1989. At any point of time there was no notice given to the petitioner. As the petitioner was going to retire on 30.11.2014, therefore the respondent department passed an order on 20.07.2014 seeking to recover the aforesaid amount of Rs.1,41,831/- towards advance increments allegedly granted to the petitioner due to wrong fixation of his pay. On receipt of the order dated

20.07.2014, the petitioner submitted his representation on 28.07.2014 on the ground that he was promoted as Technician-II on 10.06.2008 and was drawing less salary than his junior persons. The petitioner requested for removal of pay anomaly and then to adjust the amount in question. The petitioner also pointed out that in similar circumstances, four advance increments were granted to one Ram Nagina FM-4 and Sh. Mahinder Singh FM-2. Suitable conversion was made but in case of the petitioner the recovery has been effected for no fault of the petitioner in the grant of three advance increments w.e.f. 01.04.1989. Despite repeated representations, the amount in question has not been refunded to the petitioner. The petitioner had retired on 30.11.2014. The stand of the respondents is based on the undertaking dated 05.03.2009. The perusal of the same would give the following reading:-

I hereby undertake that as result of new rectification or adjustment in the pay scale granted to me on the strength of any interim order by any Court of Law or on the basis of any interim order by the Court of Law, any excess amount which may be found to have been made as a result of relevant appropriate decision taken by the HPGCL on the final decision of the Court of Law, will be refunded by me to the HPGCL either by adjustment against future payment due to me or otherwise, I further undertake to abide by such relevant appropriate decision of the HPGCL taken to the final decision of such courts of Law as the case may be:

There was an undertaking given by the petitioner on

16.03.1988 also on the same lines. The perusal of the undertakings would not make out anything in favour of the respondents as the same are so vague and discrepant as regards the cause of action if any accrued to the respondents at the time of taking these undertakings. Three advance increments were granted to the petitioner w.e.f. 01.04.1989. Pay was re-fixed thereafter after absorbing the same on 01.11.1992. The petitioner was also promoted to the post of Technician-II in the year 2008 and at no point of time the alleged recovery was sought to be made by the department. It is only in the year 2014 soon before the retirement of the petitioner, the alleged recovery has been effected.

Taking into consideration the facts and circumstances of the case, I find that withdrawal of benefit of three advance increments after such a long time is wholly illegal and the same is in gross violation of the law laid down in ***State of Punjab and others vs. Rafiq Masih(White Washer) etc. 2015(2) SCC (Civil) 608***. The ratio of said ***Punjab and Haryana High Court vs. Jagdev Singh, 2016 KHC 6515*** is not attracted as the alleged undertakings are not relatable to any cause of action for which the benefit was accorded to the petitioner.

For the reasons recorded hereinabove, I deem it

appropriate to accept this writ petition. As a result of acceptance of the present writ petition, the amount already recovered from the petitioner has to be refunded to the petitioner forthwith along interest @6% per annum from the date of recovery till final realization of the amount.

Let the needful be done within a period of two months from the date of receipt of certified copy of this order.

Disposed of.

11.05.2023

P.Bhatt

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No