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

Reserved on 11.01.2023
Pronounced on : 28.03.2023

CWP No.9257 of 2016 (O&M)

Hari Krishan .... Petitioner

Vs.

Punjab State Power Corporation Ltd. & ors. ... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. J.S.Maanipur, Advocate for the petitioner.

Mr. R.L.Sharma, Advocate for the respondents.

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PANKAJ JAIN, J.

Petitioner prays for issuance of a writ in the nature of Certiorari seeking quashing of Note appended to order dated 21.04.2016 (Annexure P-7) whereby recovery of Rs.4,84,855/- has been ordered to be adjusted from the arrears of 9/16 years ACP scale granted to the petitioner and further order dated 04.03.2016 (Annexure P-8).

Petitioner herein joined erstwhile Punjab State Electricity Board (now Punjab State Power Corporation Ltd.) as Lineman on 17.03.1979. He was promoted as Junior Engineer on 22.10.1986, however, he was reverted back as Lineman on 09.04.1990. However, the said order of reversion could come into effect only on 05.03.1992. At the time of reversion the petitioner was in the pay scale of Rs.1800-3200 attached to the post of Junior Engineer. However, even before expiry of an year, the petitioner again got selected as Junior Engineer in direct recruitment on 11.02.1993 in the pay scale of Rs.1800-3200. The petitioner was granted basic pay of Rs.2050/- on his such fresh joining i.e. the pay he was drawing at the time of reversion on 05.03.1992. Since an year had not lapsed by that day he was granted benefit of increment also in the higher pay scale attached to the post of Junior Engineer. The pay so fixed was approved and verified by competent authority and thereafter the petitioner further got benefit of two pay revisions in the corresponding pay effectuated w.e.f. 01.01.1996 and 01.01.2006. After 2nd pay revision the pay of the petitioner was again approved by the competent authority on 15.10.2009. Thereafter the petitioner further promoted as Assistant Engineer on 28.03.2013 from where he retired on attaining the age of superannuation on 31.03.2016. The petitioner has been granted benefit of Assured career progression scheme for having worked continuously for 9 years and 16 years as Junior Engineer. However, while granting the aforesaid benefits of Assured career progression scheme a note has been attached to the order Annexure P-7 directing recovery of Rs.4,84,855/- in terms of service book Page Nos.67 and 70.

Counsel for the petitioner has raised three-fold submission. He claims that the benefit being paid to the petitioner since the day he joined as Junior Engineer on 10.03.1993 has been revised after 23 years that too without affording any opportunity of hearing to the petitioner. It has been further submitted that the petitioner having retired, the recovery being effected is in violation of law laid down by the Apex Court in the case of ***State of Punjab & others Vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334.*** He further submits that the petitioner is entitled for pay protection under Rule 4.4 of the Punjab Civil Services Rules (for short the PCS Rules), Volume I part I and the authorities have misinterpreted the bare provision.

Per contra learned counsel for the respondents does not dispute that no opportunity of hearing was given to the petitioner prior to effecting recovery. However, the action is being claimed to be just and in consonance with Rule 4.4 of the PCS Rules. It has been submitted that the petitioner had no lien on the post of Junior Engineer before his regular appointment on 10.03.1993 and thus there was no occasion to protect his pay by resorting to Rule 4.4 of the PCS Rules. Before adverting to the application of Rule 4.4 of the PCS Rules this Court finds that the respondents have acted in utter violation of basic principles of law. Recovery is being sought to be effected by recording noting in service book without passing any order. This noting has an effect of revising the pay of the petitioner with effect from date which goes 23 years back from the date of ordering such recovery. Not only this, no opportunity of hearing was ever afforded to the petitioner before making such recovery. Law w.r.t. effecting recovery from Group 'C' & 'D' employee has been well laid down by Apex Court in ***Rafiq Masih's case (supra)*** wherein it has been held as under :-

> *"12. 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."

Thus this Court finds that the action of the respondents is not only in violation of principles of natural justice but also in teeth of law laid down by the Apex Court in ***Rafiq Masih's case (supra).*** I may hastenly add here that admittedly there was no misrepresentation ever on behalf of petitioner.

Since the action of the authorities has failed to pass the test of fairness on account of violation of principles of natural justice, this Court does not find it necessary to go into the argument raised on the basis of Rule 4.4 of the PCS Rules.

Resultantly, impugned orders Annexure P-7 and Annexure P-8 are ordered to be quashed. Petitioner is entitled for the amounts which have been withheld on the pretext of recovery along with interest @ 6% p.a. till the date of actual realization from the date of receipt of certified copy of this order and the same be released within a period of 12 weeks from the date of receipt of certified copy of this order.

Petition stands allowed.

(PANKAJ JAIN)
JUDGE

28.03.2023
Pooja sharma-I

Whether speaking/reasoned Yes
Whether Reportable : No