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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-5515-2018
Date of Decision: 19.01.2023

Kuldip Singh

..... Petitioner

Versus

PSPCL and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Devansh Khanna, Advocate for
Mr. Vaibhav Narang, 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 for the issuance of a writ in the nature of certiorari or any other writ, order or direction quashing the order dated 30.10.2017 (Annexure P-3) whereby recovery amounting to the tune of Rs.1,16,969/- has been made effective against the petitioner from the death-cum-retirement gratuity, after the retirement of the petitioner on 31.03.2017, in violation of the law laid down by the Hon'ble Supreme Court in "***State of Punjab and others Vs. Rafiq Masih***", ***2015(4) SCC 334***.

The brief facts of the present case are that the petitioner was appointed as Peon in Municipal Corporation, Amritsar and thereafter, he was promoted as Bill Distributor in July, 1998 but thereafter, due to some technical reasons, he was reverted back to the same post. However, in the year 1995 a merger had taken place in the Electricity Wing Municipal Corporation, Amritsar and the then Punjab State Electricity Board and by way of the merger of the employees of the aforesaid Electricity Wings were employed by the Punjab State Electricity Board, regarding which, various terms and conditions were set forth vide Annexure P-1 whereby it was provided that even the promotion prospects of the employees of the erstwhile Municipal Corporation, Amritsar would also be taken care of. Thereafter, the petitioner now being an employee of the Punjab Electricity Board was given Time Bound Scale (TBS) and according to the learned counsel for the petitioner, he was promoted to the post of Junior Meter Reader but as per the respondent-Corporation, he was never promoted but he was appointed and therefore, the Time Bound Scale was wrongly given to the petitioner on 01.04.1985. When the petitioner retired on 31.03.2017 from Punjab State Electricity Board (Now PSPCL) and his pension papers were being processed by the Accounts Department as well and an objection was raised by the Accounts Department vide Annexure P-4 that when the petitioner was given Time Bound Scale increment in the year 1995 then he could not have been given so because the JMR was an appointment and not a promotion, and therefore, his salary should be refixed and recovery be effected from him. Consequently, an amount of Rs.1,16,969/- was recovered from the Gratuity of the petitioner vide calculation made in Annexure P-3.

Mr. Pankaj Sharma, learned counsel for the petitioner submitted that two-fold prayers have been made in the present case. Firstly, seeking a direction to the respondent for restoration of the increment which has now been withdrawn after the retriement to the post of Junior Meter Reader in the year 2000 and secondly, for refund of the amount which has been recovered from the petitioner from his Gratuity which the respondent could not have deducted. He also submitted that so far as the first prayer is concerned, he does not wish to press the prayer at this stage and would like to restrict the scope of the present petition only to the extent of challenging the recovery part and he may be permitted to file a separate application/representation to the respondent-Corporation for redressal of his grievances pertaining to first prayer in accordance with law. He further submitted that the petitioner had retired on 31.03.2017 and he was Class-D employee. The increment which was Time Bound Scale, was granted to the petitioner in the year 1995 by the respondent-Corporation. It was only after the retirement due to the objection raised by the Audit/Account Department that such a recovery has been effected from the petitioner on the ground that he was not entitled for the same. He also submitted that such an action of the respondent-Corporation was totally in violation of law laid down by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih's case (supra)*** because after the retirement and also the petitioner being Class-D employee, no recovery can be effected from the petitioner. He further submitted that the increment which was granted to the petitioner was not because of any misrepresentation or fraud being committed by the petitioner but it was granted by the Punjab State Electricity Board (now PSPCL) of its own.

On the other hand, Mr. Devansh Khanna, learned counsel appearing on behalf of the respondents-Corporation submitted that so far as the aforesaid factual position with regard to grant of TBS increment to the petitioner in the year 1995 is concerned, the same is correct. However, his increment was withdrawn after the retirement because the Audit had raised an objection that he could not have been granted the benefit in the year 1995 because he was appointed to the post of Junior Meter Reader and was not promoted, and therefore, the benefit of increment could not have been granted. He further submitted that the petitioner is not entitled for the refund of amount on the ground that an undertaking was given by the petitioner vide Annexure R-4 that he or his legal heirs will pay the excess amount, if any, to the Corporation. He relied upon the judgment of Hon'ble Supreme Court in "***High Court of Punjab & Haryana and others Vs. Jagdev Singh***" ***2016(14) SCC 267*** and contended that once an undertaking is given by the petitioner himself then the judgment of the Hon'ble Supreme Court passed in ***State of Punjab and others Vs. Rafiq Masih's case (Supra)*** will not apply in the present case and rather the aforesaid judgment passed in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh's case (Supra)*** will apply.

I have heard the learned counsel for the parties.

The facts and the dates are not in dispute. The petitioner was granted Time Bound Scale increment in the year 1995 when the Punjab Electricity Wing of Municipal Corporation was merged with the Punjab State Electricity Board. The petitioner did not make any misrepresentation or fraud or suppressed any facts but the said increment was given to the petitioner by the Punjab Electricity Board (now PSPCL) at that point of time. Thereafter, the petitioner retired on 31.03.2017 and it was only thereafter, that when the case of the retiral benefits of the petitioner was sent to the Audit/Accounts Department that an objection was raised vide Annexure P-4 that since his Time Bound Scale in the year 1995 was not a promotion but it was only an appointment and increment was wrongly given to the petitioner and therefore, his salary should be recalculated and consequent upon the objection raised by the Accounts Department, an amount of Rs.1,16,969/- has been deducted from the Gratuity of the petitioner regarding which he is aggrieved in the present case. The Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih's case (Supra)*** has laid down various parameters as to when in such like cases recovery can be effected. 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:*
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> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
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> *(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."*

The petitioner retired as Class-D employee and recovery has been effected from him after his retirement of an amount which was paid to him way back in the year 1995 by way of an increment and there was no allegation of any misrepresentation or fraud or suppression of material fact by the petitioner. The judgment which has been relied by the learned counsel for the respondents-Corporation was pertaining to a situation where at the time of grant of benefit by the employer, an undertaking is given by the employee that in the event of wrong calculation etc. he will refund the amount thereafter, and it is in the nature of a notice to the employee in this regard and it was because of this reason that the Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh's case (Supra)*** has observed that the ratio of ***State of Punjab and others Vs. Rafiq Masih's case (Supra)*** will not apply in that case.

However, in the present case, a perusal of the document Annexure R-4 which has been attached by the respondent-Corporation purported to be an undertaking is undated. Even otherwise also as per the undertaking, it only says that he or his heirs upon his death are bound to pay back the excess amount if any to Punjab State Power Corporation Limited which is paid to him in excess of **Pension** payable as per rules or related to pension by PSPCL. The aforesaid undertaking is reproduced as under:-

> ***Undertaking***
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> *Consent according to foot note 4 of Rule No.9.15 of Punjab C.S.R. Volume 2*
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> *I promise that I or my heirs upon my death are bound to pay back the excess amount if any to Punjab State Power Corporation Limited/Punjab State Transmission Corporation Limited which has been paid excess to him for pension payable as per rules or related to pension by Punjab State Power Corporation Limited/Punjab State Transmission Corporation Limited.*
>
> *I promise that grant of pension under Punjab C.S.R. Volume 2 will be acceptable to me.*
>
> *Date* *Sd/-*
>
> *Signature and Designation of Applicant*

A perusal of the above would show that although the aforesaid undertaking is undated but it appears to have been given at the time of retirement by the petitioner and that is why it has been so stated in the undertaking that an amount which is paid in excess for the 'Pension' nothing is mentioned in that undertaking with regard to the Time Bound Scale.

Apart from the above, even otherwise also such an undertaking could not be relating to the time when the petitioner was given the Time Bound Scale increment because at that point of time the Corporation was Punjab State Electricity Board whereas now the undertaking relates to PSPCL, which is so incorporated in the undertaking itself and therefore, by no stretch of imagination it can be said that such undertaking was given at the time when the petitioner was granted the benefit way back in the year 1995 and therefore, this Court is of the view that reliance placed upon the aforesaid undertaking Annexure R-4 by the respondents-Corporation is totally misplaced and misconceived. Therefore, the ratio of ***High Court of Punjab & Haryana and others Vs. Jagdev Singh's case (Supra)*** will not apply in the present case whereas the law laid down in ***State of Punjab and others Vs. Rafiq Masih's case (Supra)*** will be directly applicable in the present case.

In view of the aforesaid facts and circumstances, the present petition is partly allowed. The amount of Rs.1,16,969/- which has been recovered from the petitioner is directed to be refunded back to the petitioner forthwith along with the interest @ 6%. The said amount shall be paid by the respondents-Corporation to the petitioner within a period of three months from today.

So far as the second prayer of the petitioner with regard to challenge to the refixation of pension is concerned, the petitioner shall always be at liberty to move a representation to the concerned respondent-Department and in the event of moving such a representation, the respondent-Authority shall pass a speaking order within a period of 4 months strictly in accordance with law.

The present writ petition is, accordingly, partly allowed.

19.01.2023 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes
2. Whether reportable: Yes