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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6182 of 2018
Date of Decision : 01.02.2023

Ramesh Chander

.....Petitioner

Versus

Punjab State Power Corporation Ltd. and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

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

Mr. Sehajbir Singh, Advocate for the respondents.

PANKAJ JAIN, J.

The petitioner is aggrieved of the action of the respondents of making recovery of Rs.1,28,000/- from his terminal benefits reducing his basic pay on the ground that 16th year promotion scale was wrongly granted w.e.f. 8th of September, 2005 instead of 8th of December, 2005.

2. The petitioner joined services of the respondent-Corporation as Trade Mate on 12th of August, 1988. He retired as Sub Station Attendant on 30th of March, 2017. The petitioner claims that no order of recovery was passed apart from that the pay orders of his terminal benefits contained a note to the following effect :-

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> "Before making payment it must be ensured that recovery mentioned on service book page no.70 has been recovered."

3. The petitioner after inquiry came to know that on Page 70 of his service book it has been mentioned that 16th years promotional scale vide office order dated 54 dated 1st of March, 2007 has been granted w.e.f. 8th of September, 2005 instead of 8th of December, 2005. It has been claimed that despite repeated queries no order w.r.t. recovery to be effected from the petitioner has been received yet an amount of Rs.1,28,000/- has been recovered from the amount payable to him owing to leave encashment after his superannuation. Reliance is being placed upon **State of Punjab vs. Rafiq Masih (White Washer), (2015) 4 SCC 334** to contend that action of the respondents is not only in violation of law laid down by Apex Court in **Rafiq Masih's case (supra)** rather the same is arbitrary as the recovery is being effectuated without there being any order to that effect.

4. Stand of the respondents in their written statement is that the recovery amount is Rs.1,08,577/- and not Rs.1,28,000/-. Fact of their being no order to effect such recovery has not been denied. The reason for effecting recovery has been spelled out as under :

> "8. That on the retirement of the petitioner when the pensionary benefits were to be released during audit by the Establishment Audit Department it was found out that the

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> petitioner has been illegally been paid advance increment before he was due for the same. During audit it was also found out that the annual increment due to the petitioner in the month of December has actually been paid to him in the month of September and it was for this reason that a recovery amount of Rs.1,08,577/- was due from the petitioner. It would be pertinent to mention here that this amount was recovered from the leave encashment payable to the petitioner. It would also be worth pointing out that when the said recovery was made the petitioner was informed and he duly put his signature at the relevant voucher. A copy of the said voucher is appended herewith as ANNEXURE R-1/1."

5. Mr. Sehajbir Singh, Counsel for the respondents submits that the recovery has been effected owing to grant of advance promotional increment to the petitioner three months prior to when he was entitled and thus, the same has been effected as per law. He also does not dispute that the petitioner as per the pay-scale admissible would fall within Group 'C'.

6. Having heard counsel for the parties and after carefully perusing the record of the case, this Court finds that the action of the respondents in effecting recovery from the petitioner cannot be sustained. There is no order passed by the respondents leave apart giving him opportunity before passing such order. Apart from that law w.r.t. effecting recovery from Group 'C' employee has been well laid down by Apex Court in **Rafiq Masih's** case (supra) wherein it has been held as under :-

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> "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."

7. It is also not denied that the time bound pay-scale was granted to the petitioner three months prior in time to his entitlement not on account of any misrepresentation made by him and the excess payment had been made in a period much prior to five years from the date the recovery was effected.

8. Resultantly, the action of the respondent-Corporation in effecting the recovery from the petitioner is held to be illegal and

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unsustainable and the same is hereby quashed.

9. Respondents are directed to refund the amount recovered from the petitioner i.e. Rs.1,08,577/- to the petitioner along with interest @ 8% per annum calculated for the period commencing from the date the recovery is effected till the date of actual refund. The said amount along with interest be refunded within a period of eight weeks from the date of receipt of certified copy of this order.

10. In case, the same is not refunded within the time period stipulated hereinabove, the said amount shall carry an interest of 18% thereafter which shall be paid from the personal pocket of respondent No.2.

February 01, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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