IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

222 CWP-36184-2019

Date of decision: 20.07.2023

KASHMIR SINGH

...Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION LTD. AND OTHERS

...Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

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

Mr. Sehaj Bir Singh, Advocate
for the respondents.

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DEEPAK MANCHANDA, J.(ORAL)

1. The present 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 restore the amount of Rs. 8000/- per month in the Pension of the petitioner which has been deducted without any hearing and Show Cause Notice to the petitioner from the Month of October, 2019 onwards, whereas, the petitioner retired as Additional Assistant Engineer from the respondent-Corporation on 28.02.2014 and to restore the deducted amount of Rs.8,000/- per month as pension along with 18% interest from the day it has been deducted i.e. from October, 2019 onwards.

2. Brief facts of the case are that the petitioner was initially appointed as lineman in the office of Municipal Corporation, Amritsar in February, 1980. In the year 1988, the petitioner was promoted as Junior Engineer with the Municipal Corporation, Amritsar and vide office order No. 36 dated 18.02.2002, petitioner also got 16 years Time Bound Scale

after 16 years of service. In the year 2004, the petitioner again got promotion as Additional Assistant Engineer, (Addl. Sub Divisional Officer) and his place of posting was at City Centre Division, City Circle, Amritsar. Vide order dated 30.12.2013 (Annexure P-1), petitioner retired on 28.02.2014 after attaining the age of 58 years from Respondents-Corporation from City Circle Amritsar as Additional Assistant Engineer (AAE). Initially the petitioner was an employee of the Municipal Corporation, Amritsar but later vide Notification/orders dated 01.04.1995, the said Municipal Corporation was merged into Punjab State Electricity Board (PSEB). Then in April 2010, the said PSEB bifurcated as Punjab State Power Corporation Ltd. (PSPCL) and Punjab State Transmission Corporation Ltd. (PSTCL). Thus, the petitioner become an employee of the respondent-Corporation (PSPCL). The petitioner finally retired on 28.02.2014 after attaining the age of superannuation but initially nothing has been paid to him by the Respondent-Corporation. The petitioner in this regard made a representation after his retirement to the Respondent-Corporation. Vide order dated 17.09.2014, the petitioner was able to get the provisional pension from the Respondent-Corporation.

3. It is mentioned that the respondent-Corporation right from the date of retirement of the petitioner harassing the petitioner one way or the other, and the retiral benefits were not paid to the petitioner even after his retirement. Accordingly, the petitioner approached this Court by way of CWP No.7863 of 2015 regarding payment of Gratuity, Commuted Value of pension and Regular Pension in place of Provisional Pension. Vide order dated 27.04.2015 (Annexure P-2), the said writ petition was disposed with a direction to to the respondents to treat the petition as representation

and decide the same within 04 months. Vide order dated 19.01.2015, after passing of one year the respondent-Corporation released the amount of Leave Encashment to the petitioner.

4. Vide letter No.C-776 dated 30.10.2014, a charge sheet had been issued to the petitioner in the month of October 2014, almost after 8 months from the date of his retirement. The Charge as per the Charge Sheet was pertaining to the month of September 2013 and the petitioner in one of the case of Sh. Anil Kumar, consumer, while inspecting his electric Meter, at the time of Inspection, has prepared a report that no case of theft of Electricity is made out against the said Consumer. But still, the respondent-Corporation found the Consumer guilty and accordingly said customer was asked to deposit an amount of approximately Rs.4 lacs including compounding fees. The petitioner submitted the detailed reply to the said charge-sheet on 15.12.2014 but the punishing authority decided to punish the petitioner by way of 10% cut in pension for 3 years. The petitioner feeling aggrieved against the same filed another CWP No.2795 of 2016 and the same is pending adjudication before this Court. Vide order dated 16.02.2016, where the operation of the impugned order dated 21.08.2015 challenged therein was stayed till further orders.

5. Vide order dated 28.05.2018, the petitioner got 23 years promotional increment after completing 23 years of service with the respondent-Corporation, the same was paid to the petitioner w.e.f 01.02.2003. During entire service the petitioner did not get any third promotion.

6. Learned counsel for the petitioner contends that the petitioner is receiving an amount of Rs. 8000/- less in his pension account from the

month of October, 2019 onwards, the pension slip of the said month is annexed as Annexure P-5. He further contends that vide letter/representation dated 15.11.2019 (Annexure P-6) and 17.11.2019 (Annexure P-7), the petitioner enquired from the concerned officers but all in vain and no reply was given. He further contends that the recovery of 23 years Promotional Increment has been made by way of an adjustment from the pension of the petitioner, where arrears were given to the petitioner at the time of granting 23 years promotional Increment after completing 23 years of Service in the year 2003. He also contends that from the date of retirement, vide order dated 28.05.2018, the said recovery by way of an adjustment was started deducting to recover Rs. 8,000/- per month from the pension of petitioner that too without any Show Cause Notice and no opportunity of hearing to the petitioner has been afforded.

7. Learned counsel for the respondents while referring to the reply dated 02.02.2023 submits that while final audit of service book of the petitioner by AO EAD/PSPCL, Patiala vide letter No.3352 dated 22.04.2019, it was first time brought to notice that the benefit granted qua advance promotional benefits with effect from 29.02.2003 which was to be absorbed on next promotion of the petitioner as per Finance Circular No.20/2000, the same had not been adjusted at the time of promotion while fixing the pay of the petitioner. Accordingly, the pay of the petitioner was re-fixed at page No.60 of service book vide letter No.4869 dated 31.05.2019 and recovery of Rs.93,003/- was found recoverable from the petitioner. He further submits that since no other re-course was available at that time, hence, the amount of Rs.8,000/- as a monthly installment was started deducting from the month of October & November, 2019. Learned

counsel for the respondents also submits that petitioner was chargesheeted after the date of retirement which was as per instructions of the department where disciplinary proceedings for the negligence conducted during service were initiated and petitioner was found guilty but the same had been challenged by the petitioner separately vide CWP No.2795 of 2016, which is still pending adjudication.

8. Having heard learned counsel for the parties and have perused the material available on record with the able assistance of the counsels.

9. The petitioner was retired from respondent-Corporation as Additional Assistant Engineer on 28.02.2014 which is an admitted position by the respondent-Corporation. The petitioner's objection is that Rs.8,000/- per month had been started deducting from his pension w.e.f. October, 2019 onwards that too without any hearing and show cause notice to the petitioner and by way of recovery as an adjustment of 23 years promotional increment given in the year 2003 to the petitioner in an arbitrary and illegal manner and to support his contentions he has also relied upon the settled law in case titled as "***State of Punjab Vs. Rafiq Masih" 2015 (4) SCC 334*** wherein it has been held that the recovery from the retiree if any cannot be made after retirement of the petitioner and as per the guidelines issued therein which are applicable to the present case of the petitioner where the recovery is arbitrary, illegal and is unjustified. He has further relied upon the Finance circular No.2 of 2016 issued by the respondent-Corporation vide which it has been directed that no recovery shall be made out.

10. As per reply the respondents have failed to show that whether before deduction of an amount in dispute qua the pension whether any

show cause notice or opportunity of hearing was granted to the petitioner where even the representations dated 15.11.2019 (Annexure P-6) and 17.11.2019 (Annexure P-7) have neither been decided nor have been replied. In absence of the same, this Court is in agreement with the submissions made by learned counsel for the petitioner that without show cause notice and granting opportunity of hearing to the petitioner the respondents had started deducting the amount of pension and the said act is unjustified even in the light of the settled proposition of law as per ***State of Punjab Vs. Rafiq Masih (supra)***. Though during the pendency of the present petition this Court vide order dated 13.12.2019 directed the respondents to inform as to whether the recovery is being done by the respondents without there being any order to the said effect and if there is any order passed the same should be placed on record by the respondents. A perusal of order sheet reveals the respondents failed to produce any such order which was asked to be produced by this Court vide order dated 13.12.2019 and thereafter, the order dated 18.12.2019 also transpires that learned counsel for the respondents shown inability to produce any such order by which the recovery has been imposed upon the petitioner. Keeping in view the conduct of the respondents this Court vide order dated 18.12.2019 stayed the recovery and which continued till decision of the present petition i.e. 20.07.2023. The Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (supra)*** discussed the entire issue and observed that recoveries by the employers would be impermissible in law and in para 18 clause (ii) specifically mentioned that recovery from retired employees or the employees who are due to retire within 01 year of the order of recovery is not permissible in law. The relevant portion of the aforesaid judgment reads 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 hereinabove, 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 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."*

11. After having examined the facts of the case as well as in the light of the settled proposition of law in aforementioned judgment where the respondents have failed to issue show cause notice as well as not granting the opportunity of hearing started deducting the amount of Rs.8,000/- per month from the pension of the petitioner. The said amount deserves to be restored and continued even as per order dated 18.12.2019 passed by this Court being a retired employee who cannot be made to suffer due to the conduct and violations made by the respondent-

Corporation in the light of the statutory provisions as well as settled proposition of law.

12. In the light of the above discussion, the present writ petition is allowed. Consequently, the deduction of Rs.8,000/- per month from pension of the petitioner is ordered to be restored to the petitioner and respondent-Corporation is restrained from making any recovery from the petitioner and amount of recovery which has already been made from the petitioner, if any, prior to the interim order dated 18.12.2019 passed by this Court shall be refunded to the petitioner forthwith along with interest @ 6% per annum within a period of 03 months from the date of receipt of certified copy of this Court. In case the aforesaid amount is not paid within the stipulated period, then the petitioner shall be entitled for future rate of interest @ 9% per annum instead of 6% per annum.

(DEEPAK MANCHANDA)
JUDGE

July 20, 2023
Ajay Goswami/Nisha-II

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*