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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1938-2024

Date of Decision:31.01.2024

SUKHCHAIN SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. G.S. Brar, Advocate and
Mr. G.P. Vashisht, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 20.07.2023 (Annexure P-4) and order dated 27.12.2023 (Annexure P-5) whereby petitioner has been directed to pay a sum of Rs.24,89,419/- i.e. salary which was paid to petitioner during 09.12.2016 to 04.05.2023.

2. The petitioner on 05.05.1992 joined respondent as Home Guard. The petitioner vide order dated 04.05.2023 was relieved on attaining the age of 58 years. The petitioner was of the opinion that his date of birth is 10.10.1965, thus, he would complete 58 years on 10.10.2023, however, respondent did not agree with the petitioner. He preferred CWP No.10781 of 2023 before this Court seeking direction to respondents to decide his representation dated 08.05.2023. This Court vide order dated 18.05.2023 (Annexure P-3) directed the respondent to

decide representation of the petitioner. The respondent vide order dated 20.07.2023 (Annexure P-4) has concluded that actual date of birth of petitioner is 10.12.1958 whereas petitioner is wrongly claiming his date of birth as 10.10.1965. The respondent has further concluded that petitioner was ineligible to work with department from 09.12.2016 to 04.05.2023, thus, he is not entitled to salary for the said period.

3. Notice of motion.

4. Mr. Inderpreet Singh Kang, AAG, Punjab who on advance notice is present in Court accepts notice and waives service.

5. With the consent of both sides, the matter is taken up for final disposal.

6. Learned counsel for the petitioner submits that petitioner, indubitably, had worked during 2016 to 2023, thus, he cannot be denied salary for the said period, thus, impugned recovery notices are bad in the eye of law.

In support of his contention, he relies upon judgment of Supreme Court in *State of Punjab Vs. Rafiq Masih (White Washer) etc 2015 (4) SCC 334*.

7. Per contra, learned State counsel submits that petitioner misrepresented his date of birth and he was not eligible to work during 2016 to 2023, thus, he wrongly got salary during the said period.

8. On being confronted, learned State counsel conceded that petitioner had actually worked with the department and he was paid salary for his work.

9. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

10. It is an undisputed fact that petitioner during 2016 to 2023 had worked with the respondent-Department. The petitioner was claiming that he should be permitted to work upto October'2023 instead of May'2023 and respondent has concluded that he was not eligible to work beyond 9th December'2016 because he attained age of superannuation on the said date. The petitioner indubitably had worked during 2016 to 2023 and he was paid salary for the work done. The respondent is not seeking recovery of payment made over and above actual entitlement whereas respondent wants to recover salary which was paid for the work done.

Supreme Court in ***Rafiq Masih*** (Supra) had occasion to advert with question of recovery of excess amount from an employee. The Court after considering plethora of judgments had contemplated situations where recovery should not be effected from an employee. The relevant extracts of the judgment read as:

“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 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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. The petitioner admittedly was Class-III employee and he had discharged duties of the post assigned. He was paid salary for the work done. It is not a case of payment of over and above the salary. The petitioner cannot be denied salary of the period, he has actually worked. The case of the petitioner is squarely covered by above referred judgment.
12. In the wake of above discussion and findings, this Court is of the considered opinion that the present petition deserves to be allowed and accordingly allowed. The impugned orders dated 20.07.2023 (Annexure P-4) and 27.12.2023 (Annexure P-5) are hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

31.01.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No