2024:PHHC:086483

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2995 of 2024
Date of decision: 11.07.2024

Dalip Kaur

......Petitioner

Versus

Punjab State Power Corporation Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. A.K. Walia, Advocate,
for the petitioner.

Mr. R.P.S. Bara, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. Instant writ petition has been filed under Article 226 of the Constitution of India, for issuance of a writ in the nature of *certiorari* for quashing the impugned recovery of Rs.4,83,651/- from the death-cum-retirement gratuity paid to the petitioner being widow of late Surinder Singh J.E., who retired from service on 30.04.2018 and died on 20.08.2022.

2. Brief facts, as narrated in the writ petition, are that husband of the petitioner, namely, Surinder Singh Sohal retired from the service of respondents-Punjab State Power Corporation Limited on 30.04.2018. At the time of retirement of the petitioner, two departmental inquiries were pending against him, therefore, his final pension and retirement gratuity were withheld. In charge-sheet No.50 dated 09.03.2016 inquiry culminated vide order dated 10.08.2021 whereby a cut of 5% in the pension of the petitioner for one year and

recovery of Rs.33,654/- was imposed on Surinder Singh Sohal. Charge-sheet No.37 dated 14.06.2018 was dropped vide office order dated 23.01.2023 Even after culmination of inquiry, pension and gratuity of Surinder Singh Sohal were not released. Consequently, Surinder Singh Sohal filed a civil suit for declaration for release of his retirement gratuity, along with interest @ 18% per annum. However, during the pendency of the said suit, Surinder Singh Sohal died on 20.08.2022. Thereafter, respondents raked up another recovery of Rs.4,83,651/- against Surinder Singh Sohal for which no show-cause notice had been issued to him during service. Husband of the petitioner was compelled to give in writing that amount of Rs.4,83,651/- may be withheld till any final recovery order is passed by the respondents. Family pension and gratuity were released by the respondents to the petitioner vide pension pay order dated 29.08.2023 (Annexures P-3 and P-4). However, out of gratuity amount of Rs.10,00,000/-, petitioner was paid an amount of Rs.5,16,349/-, after deducting Rs.4,83,651/-. Hence, this writ petition.

3. Pursuant to notice of motion, respondents filed their written statement submitting that besides above charge-sheets various recoveries and account settlements were pending against late Surinder Singh Sohal, therefore, the amount of Rs.4,83,651/- was deducted from the gratuity amount given to the petitioner.

4. Learned counsel for the petitioner contended that respondents have wrongly recovered amount of Rs.4,83,651/- from the death-cum-gratuity amount released to the petitioner inasmuch as no

opportunity of hearing was given nor show-cause notice/charge-sheet had been served on the husband of the petitioner, during his service. He further contended that no recovery can be effected from the legal representatives of the deceased employee.

5. On the other hand, learned counsel for the respondents supported the aforesaid recovery effected from the death-cum-gratuity paid to the petitioner. He contended that aforesaid amount has been deducted on account of various recoveries and account settlements pending against the deceased employee for which he had given declaration to recover the said amount from his gratuity.

6. I have heard learned counsel for the parties and perused the record.

7. Admittedly, husband of the petitioner retired from service on 30.04.2018 and died on 20.08.2022. Till his death, pension and other retiral dues were not released by the respondents to husband of the petitioner. The action of the respondents in recovering the amount of Rs.4,83,651/- from the death-cum-gratuity of the petitioner is totally illegal as no opportunity of hearing/show-cause notice was issued to the husband of the petitioner with regard to the said recovery.

8. Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih (White Washer) etc 2015 (4) SCC 334*** has laid down circumstances where no recovery can be effected from an employee despite excess payment. The circumstances enumerated in the judgment are not conclusive. The circumstances where the Court has categorically held that no recovery shall be effected are reproduced as below :

"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).

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

(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."

9. The case of the petitioner falls under Clause (i) & (ii) of the judgment as indicated above. Further, the husband of the petitioner has already expired on 20.08.2022 and the recovery has been effected from the death-cum-gratuity paid to the petitioner vide gratuity pay

order dated 29.08.2023, which is also wrong as in view of the settled law, no recovery can be effected from the LRs of the deceased employee.

10. This Court in ***Ex Naik Bhag Chand v. Director General of Police, CRPF and others, 2024 LIC 1694*** has held as under: -

> *"9. In the case in hand, as confirmed by counsel for the petitioner, the wife of the deceased employee has already passed away and children being major are not entitled to family pension, thus, state is not paying family pension to any family member of the deceased employee. The respondent-UOI has conceded that no recovery can be effected from legal heirs of deceased employee, however, bank is disputing on the ground that deceased employee had furnished undertaking. The undertaking, if any, furnished by deceased employee was binding upon him and in the absence of any statutory provision, it cannot create liability of legal heirs.*
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> *The Supreme Court in above-cited judgments has held that even tax cannot be recovered from legal heirs of a proprietorship concern if there is no statutory provision. An employee gets pension under the statutory provisions. The right of pension has been recognised as constitutional right in terms of Article 300A of Constitution of India. It is apt to notice that prior to omission of clause (f) of Article 19(1) of the Constitution of India, it was considered as fundamental right.*
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> *10. This Court everyday is getting similar cases where there is excess payment on account of mistake on the part of bank. The employer i.e. Union of India or State Government is not at fault whereas it is bank who is at fault and claiming that excess payment has been made on*

account of its mistake. There is no case whereas it has been found that mistake was on the part of employee.

In every case, there is mistake on the part of bank. The bank has initiated recovery even against more than 80 years old widow. It ill behoves the banks.

11. In the above backdrop, this Court is of the considered opinion that the present petition deserves to be disposed of with a direction that no further recovery shall be effected from the legal heirs of the petitioner (deceased)."

11. In view of the above, present writ petition is allowed and the respondents are directed to refund the recovered amount of Rs.4,83,651/- from the death-cum-retirement gratuity of deceased husband of the petitioner, to the petitioner along with interest @ 6% per annum from the date of recovery till its payment. Necessary exercise be carried out within a period of two months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

11.07.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No