

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-4562-2020
Decided on : 23.04.2024

Lakhwinder Bhagat

.....Petitioner

Versus

Punjab State Power Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

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

Mr. Tarun Vir Singh Lehal, Advocate for the respondents.

NAMIT KUMAR, J. (Oral)

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India seeking a writ of certiorari for quashing the order dated 29.08.2019 (Annexure P-3) passed by respondent No.3, whereby an amount of Rs.1,38,403/- has been deducted and recovered from the death-cum-retirement gratuity of the petitioner after his retirement and further sought a writ of mandamus directing the respondents to restore the proficiency step up given in 1996 and promotional increment given on 16.04.1999 to the petitioner by re-fixing the salary w.e.f. 01.03.1996 and to refund the recovered amount to the petitioner along with interest @ 18% per annum.

2. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner was initially appointed as Regular T-mate in the Electricity Wing of the Municipal Corporation, Amritsar on 02.03.1988 and after 8 years of his service, he got one proficiency step

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in the year 1996. Thereafter, he was promoted as Assistant Lineman on 16.04.1999 and as Lineman on 09.03.2016 and retired as such on 30.06.2019, on attaining the age of superannuation. There was nothing adverse against the petitioner in his entire service record. He had completed all the formalities required for grant of retiral and other service benefits and nothing more was required to be done by the petitioner. When the petitioner was waiting for the retiral benefits to be released to him, he came to know that recovery of certain amount has been made from his gratuity as per Finance Circular No.1/2003. As per the said circular the benefit of grant of proficiency step up increments earlier allowed between 1996 to 1999 was discontinued. After re-fixing the salary, the respondent-Corporation deducted the amount from the gratuity of the petitioner. Hence this petition.

3. On issuance of notice of motion, reply on behalf of respondents has been filed, in which it has been stated as under :-

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2. *That the present writ petition is liable to be dismissed on the ground that an amount of Rs. 138403/- was recovered from the DCRG of the petitioner after scrutinizing the service documents of the petitioner. The petitioner was initially appointed as Regular Team mate with the Municipal Corporation, Amritsar on 02.03.1988. Thereafter the petitioner was promoted to the post of Assistant Lineman on 16.04.1999. **The benefit of 8 years proficiency step up was granted to the petitioner on 02.03.1996 which was wrongly given to petitioner because grant of proficiency step up was discontinued from 01-01-1996 vide FC No.1/2003 (Annexure R/1).** The finance circular 05/2013 dated 07/01/2013 was issued by PSPCL (Annexure P-5) regarding RTM (Regular Team Mate) post treated as Induction post and entitlement of 1st and 2nd*

Time Bound Promotional Scale (TBPS) of the post of Regular Team Mate (RTM). It is submitted that there is a condition in this circular that the employees opting for RTM as induction post shall be entitled to promotional benefits. If the employee is opting ALM (Assistant Lineman) as induction post then he shall not be entitled to promotional benefits. This circular is applicable w.e.f. 01.01.1986. In this case the petitioner got 1st TBPS from the post of ALM (Induction Post) on 17.04.2008 and 2nd TBPS on dated 17.04.2015 after completion of 16 years of service as ALM. The petitioner did not opt for RTM as induction post so, it is presumed that the petitioner does not want to change his induction post from ALM to RTM. Thus the respondents had rightly recovered the excess amount from the petitioner which was disbursed to the petitioner as promotional increment & by the way of proficiency step up.

3. *That the present writ petition is liable to be dismissed on the ground that the petitioner was posted to the post of Assistant Lineman on 03.10.2001, however, the the petitioner is not entitled to the benefit of promotional increment from the post of RTM to ALM as the ALM iwas fixed as his induction post.*

4. *That the present writ petition is liable to be dismissed on the ground that the fact regarding payment of excess amount came to the knowledge of this office while scrutinizing the service record of the petitioner. The respondents had recovered only that amount from the petitioner which has been excessively paid to the petitioner after his posting as Assistant Lineman, as promotional increment from the post of RTM to ALM and proficiency step up increment from 02-03-1996 was discontinued from 01-01-1996 vide FC No. 1/2003. The petitioner is not entitled to unjust enrichment at the cost of public money and moreover, the entire facts were well within the knowledge of the petitioner. Office of the petitioner also issued a letter vide memo no:6235 dated :17-10-2019 (Annexure P-5) in which the petitioner was asked to deposit the amount of recovery on account of objection being raised by Audit office, EAD, Patiala.*

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4. Learned counsel for the petitioner submits that the petitioner has retired from service as Lineman on 30.06.2019 and after his retirement, an amount of Rs.1,38,403/-, being alleged excess payment made to him, has been ordered to be recovered from his gratuity on 29.08.2019. He submits that the recovery has been effected from the petitioner without passing any specific order and without issuance of any show cause notice or personal hearing in unilateral manner, which is not only in violation of the principles of natural justice but also against the law laid down in judgment of the Hon'ble Supreme Court passed in *State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195*. During the course of hearing, learned counsel for the petitioner confines his prayer qua recovery of an amount deducted from the gratuity of the petitioner.

5. On the other hand, learned State counsel, while referring to the averments made in the reply, submits that the petitioner had wrongly been granted the benefit of 8 years proficiency step up on 02.03.1996 because grant of proficiency step up was discontinued from 01.01.1996 vide FC No.1/2003 and the said fact has come to the knowledge of the Corporation while scrutinizing the service record of the petitioner.

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

7. It is the case of the petitioner that he stood retired as Lineman on 30.06.2019 and after his retirement an amount of Rs.1,38,403/- has been ordered to be recovered from his gratuity vide

gratuity payment order dated 29.08.2019, on the ground that he had wrongly been granted the benefit of 8 years proficiency step up on 02.03.1996.

8. The argument raised by learned counsel for the respondents is not sustainable as even if an excess amount on the basis of wrong fixation of pay was paid to the petitioner, the same cannot be recovered from him after his retirement. The action of the respondent-Corporation is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (Supra)***. The relevant portion of the aforesaid judgment is reproduced 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 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.”

9. The facts and circumstances of the present case suggests that it is not the case of the respondent-Corporation that it was due to some fraud or misrepresentation of the petitioner, who was working against Class III post, that he was granted the benefit of 8 years proficiency step up on 02.03.1996 but it was granted by the respondent-Corporation on their own. Recovery has been made on 29.08.2019 i.e. after a span of 23 years.

10. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by Clauses (i), (ii) and (iii) of the judgment of Hon'ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***.

11. Further, the recovery has been ordered by the respondents in violation of the principle of natural justice as neither any show cause notice was issued to the petitioner nor he was granted an opportunity of personal hearing.

12. Consequently, the present petition is allowed and the impugned order dated 29.08.2019 (Annexure P-3), passed by respondent No.3, to the extent an amount of Rs.1,38,403/- has been

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recovered from the gratuity of the petitioner, is quashed and the respondents are directed to refund the said amount of Rs.1,38,403/- to the petitioner, along with interest @ 6% per annum from the date it was due till the actual date of payment, within a period of 03 months from the date of receipt of certified copy of this order.

23.04.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No