2024:PHHC:047681

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

262+109

**CWP-8057-2022 (O&M)
Decided on : 08.04.2024**

Rajesh Kumar …..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. Gauravdeep Singh Dhaliwal, Advocate
for the respondents.

NAMIT KUMAR, J. (Oral)

CM-4205-CWP-2024

Prayer in the instant application filed under Section 151 of CPC is for placing on record the affidavit of petitioner along with document as Annexure P-7.

Allowed as prayed for subject to all just exceptions.

CWP-8057-2022

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India seeking a writ of mandamus directing the respondents to release the retirement benefits to the petitioner i.e. gratuity, commuted pension, full pension along with interest @ 18% per annum on the delayed payment of retiral benefits and not to recover the amount of Rs.1,53,675/- from the pensionary benefits/gratuity of the petitioner.

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. Thereafter, he was promoted as Assistant Lineman on 05.10.2001 and Lineman in the year 2018 and retired as such on 30.09.2021. During his service tenure, the petitioner also got proficiency step-up after 8 years of service w.e.f. 02.03.1996; 1st time bound scale after completing 09 years of service on 05.10.2010 and 2nd time bound scale after completing 16 years of service on 05.10.2017. The respondent-Corporation issued a letter dated 30.07.2018 to the petitioner vide which it was mentioned that in view of Finance Circular No.05/2013, promotional increment given to the petitioner, at the time of his promotion from Regular T-mate to Assistant Lineman on 05.10.2001, is liable to be taken back and after re-fixing his salary, an amount of Rs.1,53,675/- is liable to be recovered from him. It was further mentioned in the letter that after getting 16 years scale on 06.10.2017, the arrears upto 30.06.2018 has come out to Rs.8,653/- and after deducting the said amount from Rs.1,53,675/-, the recovery of Rs.1,45,022/- is liable to be effected from the petitioner. The petitioner was asked to reply the said letter within 07 days. The petitioner after receiving the said letter gave his detailed reply submitting that recovery cannot be effected from him as per Finance Circular 56/1990 and 33/1988. Meanwhile, the petitioner retired from the respondent-Corporation as Lineman on 30.09.2021, on attaining the age of superannuation. When the petitioner was waiting for the retiral benefits

to be released to him then during verification of the service book of the petitioner, respondent No.2 asked respondent No.3 to verify the service book of the petitioner. During the verification, besides other objections, an objection was raised that in view of Finance Circular No.05/2013, salary of the petitioner is required to be re-fixed from 01.03.2011. Earlier, the respondent-Corporation calculated the recovery amount from the year 2001 but lateron respondent-Corporation decided to calculate the recovery amount by re-fixing the salary of the petitioner from the year 2010 onwards till the date of retirement. After re-fixing the salary of the petitioner and other calculations, the recovery amount comes to Rs.1,21,453/-. 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 :-

> *"xx xx xx xx xx*
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> *3. It is respectfully submitted here reliance on Hon'ble Supreme Court judgment in the case of State of Punjab and others versus Rafiq Masih etc* ***2015(4) SCC 334*** *and Syed Abdul Qadir versus State of Bihar* ***2009(3) SCC 475*** *are not applicable to the instant case in hand as the petitioner opted for induction post as ALM and got the benefit of first time bound promotional scale after 9 years on 05.10.2010 and second time bound promotional scale after 16 years on 05.10.2017. It is pertinent to mention here that the process of recovery of excess amount paid to the petitioner had started before retirement of the petitioner on 30.07.2018 and proper correspondence was made in this regard. It is pertinent to mention here that nothing has been recovered from the retirement benefit/dues of the petitioner i.e. after pension, gratuity, CVO, GPF and Leave Encashment. All the pensionary dues have been paid to the petitioner.*
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> *xx xx xx xx xx"*

4. Learned counsel for the petitioner submits that the petitioner has retired from service as Assistant Lineman on 30.09.2021 and although all the retiral benefits of the petitioner have been released to him during the pendency of the present petition, however, the same have been released after a considerable delay. He submits that now after the retirement of the petitioner, recovery of Rs.1,21,453/- has been ordered to be effected from the petitioner by re-fixing his salary from the year 2010 to the year 2017 which is 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***. He further submits that since the retiral benefits of the petitioner were released after a considerable delay, therefore, he is entitled for interest on the delayed payment of retiral benefits in view of the law laid down by a Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others : 1997(3) S.C.T. 468*** and ***J.S. Cheema Vs. State of Haryana : 2014(13) RCR (Civil) 355***. The details of payment of retiral dues is as under :-

Particulars	**Amount (Rs.)**	**Date of retirement**	**Paid**
Gratuity	9,84,555/-	30.09.2021	29.09.2022
Commuted Pension	9,90,410/-	30.09.2021	10.10.2022
Arrears of Pension	36,700/-	30.09.2021	01.09.2022

5. On the other hand, learned counsel for the respondents, while referring to the averments made in the reply, submits that the process of recovery of excess amount paid to the petitioner had started

before the retirement of the petitioner on 30.07.2018 and proper correspondence was made in this regard. He submits that since all the retiral benefits have been released to the petitioner and nothing has been recovered from his retiral benefits, therefore, the present petition is liable to be dismissed.

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 Assistant Lineman on 30.09.2021 and after his retirement an amount of Rs.1,21,453/- has been recovered from him by re-fixing his salary from the year 2010 to the year 2017 and his retiral benefits were released after a considerable delay.

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:-

> *"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 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 petitioner is Class-III employee and 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 that he was granted the excess payment but it was granted by the respondent-Corporation on their own.

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

11. So far as the claim of the petitioner regarding payment of interest on the delayed retiral benefits is concerned, it is an admitted fact that since either before or after the retirement of the petitioner, no departmental/criminal proceedings were pending against him, therefore, his retiral benefits were required to be released within a reasonable time

after his retirement and the petitioner cannot be denied the benefit of interest on the same.

12. A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others : 1997(3) S.C.T. 468*** has held that where there is an inordinate delay in releasing benefits and the delay is not justifiable, employee will be entitled for interest. The relevant paragraph of said judgment is as under:-

> *"Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."*

13. Apart from this, a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana : 2014(13) RCR (Civil) 355***, had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of the said judgment is as under: -

> *"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate*

because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."

14. In view of the above factual position and settled principles of law, the present petition is allowed and the order/letter dated 30.07.2018 (Annexure P-2) passed by the respondent-Corporation, whereby an amount of Rs.1,53,675/- (which was reduced to Rs.1,21,453/- later on) has been ordered to be recovered from the petitioner, is quashed and if recovery has been made, the respondent-Corporation is directed to refund the same and to pay interest @ 6% per annum to the petitioner, on the delayed payment of retiral dues w.e.f. 01.12.2021 (i.e. after two months from the date of retirement) till the actual date of payment, within a period of 03 months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

08.04.2024
Kothiyal

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No