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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8442-2020 (O&M)
Date of Decision: 09.02.2024

Varinder Kumar Sharma

....Petitioner(s)

Versus

Uttar Haryana Bijli Virtan Nigam Ltd. and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Harkirat Singh, Advocate, for
Mr.Vikram Singh, Advocate, for the petitioner.

Mr. Ashish Yadav, Advocate, for the respondents.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *mandamus* directing the respondents to refund an amount of Rs. 58,296/- alongwith interest @ 18% per annum which has been recovered from the leave encashment of the petitioner after his retirement without passing any order and without issuance of any show-cause notice.

2. The short issue involved in the present case is that the petitioner was working as a Divisional Accountant in the respondent-Nigam and he was falling in the category of Group-C. After his retirement on 28.02.2013 when the retiral benefits were to be disbursed to the petitioner, then the respondent-Nigam recovered/withheld an amount of Rs. 58,296/- from the leave encashment of the petitioner. However, there was no specific

order passed in this regard as to how and under what authority of law the amount was recovered.

3. Learned counsel appearing on behalf of the petitioner submitted that as per reply filed by the respondent-Nigam, at the time when the petitioner was in service, he was granted the benefit of increment w.e.f. 01.07.1992 on completion of 8 years of regular service as Junior Accountant according to the instructions which were prevalent at that time but as per the reply now filed by the Nigam. it has been so stated that inadvertently and wrongly he was granted the aforesaid benefit and now after the retirement the aforesaid amount has been recovered from him, although without passing any specific order which is totally in violation of the settled law. He referred to a judgment of Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334*** and also submitted that even after the passing of the judgment by the Hon'ble Supreme Court as aforesaid even the State itself has issued instructions on 23.02.2016 that no recovery can be made from the retired employee or an employee who is going to be retired within a period of one year and also no recovery could be effected from employee belonging to Class-III and Class IV (Group-C & D) in consonance with the judgment of the Hon'ble Supreme Court. The aforesaid instructions have also been reproduced in para No.9 (v) of the writ petition.

4. On the other hand, Mr. Ashish Yadav, learned counsel appearing on behalf of the respondent- Nigam submitted while referring to the reply filed by the Nigam that the aforesaid recovery was made from the leave encashment because he was wrongly given the increment w.e.f. 01.07.1992 and therefore, the aforesaid recovery was effected.

5. I have heard the learned counsel for the parties.

6. The petitioner while he was in service was granted the benefit of increment w.e.f 01.07.1992. He continued to get the aforesaid benefit and it appears that there was no objection by any quarter and he continued to get the benefit. He retired on 28.02.2013 and after his retirement when he was to be given the retiral benefits, then an amount of Rs. 58,296/- has been deducted from his leave encashment. There is no allegation of fraud or mis-representation on the part of the petitioner. Even otherwise also, the aforesaid proposition of law is now well settled. Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others (Supra)*** held that such kind of recovery cannot be effected especially after the retirement and from Group-C & D employees. The relevant part 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *(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."*

7. In the year 2016, the State itself also issued instructions from implementing the aforesaid judgment which have been reproduced in para No.9(v) of the petition.

8. A perusal of the written statement filed by the Nigam would show that rather it has been so specifically stated that when the petitioner was granted the increment, he was granted inadvertently and wrongly and now it has been recovered after his retirement. Therefore, it is very clear that the prayer of the petitioner was covered by the settled law in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others (Supra)*** and also the instructions issued by the State in the year 2016.

9. The present reply has been filed by one Chief Accounts Officer of the Nigam. It has been so stated in the reply especially in para No. 1 and 2 that the petitioner has no right to file the present writ petition and the answering respondents have done all the acts and action as per settled law and rules framed by the statute and by its Nigam and nothing has been done contrary to settled rules and legal proposition and in para No.2, it has also been stated by the officer who has filed the reply that the petitioner has concealed the material facts but nothing has been shown on the record to show as to how he has concealed the facts. The aforesaid para No.1 and 2 of the preliminary submissions are reproduced as under:-

> *"1. That the instant writ petition is pending before this Hon'ble Court for its kind adjudication and the same is now fixed for 03.05.2021. That the petitioner has no right to file the present writ*

petition in this Hon'ble Court against the answering respondents as the answering respondents has done all the acts and action as per settled law and rules framed by the statute and by its Nigam. Nothing has been done by the answering respondents contary to settled rules and legal proposition.

2. That through the instant writ petition, petitioner is seeking a writ in the nature of Mandamus praying for a direction for the respondents to refund the amount of Rs. 58,286/- along with interest @ 18 % per annum allegedly recovered from the Leave Encasement of the petitioner at the time of his retirement. In this regard it is humbly submitted that at the petitioner was appointed as Shift Attendant on 25.06.1982 and further he was appointed as Junior Accountant on 22.04.1988 as per his request. It is pertinent to mention here that the benefit of additional increment was allowed to those employees who has completed 8 and 18 years of regular satisfactory service in a particular group. However, inadvertently and wrongly the petitioner was granted the benefit of additional increment w.e.f. 01.07.1992 although he had not completed 8 year of regular services as Junior Accountant as per said instruction. Accordingly, the pay of the petitioner was refixed in the light of said instructions and the same was got pre-audited by the pay fixation authority resulting into a recovery of Rs 58,296/. Accordingly, the action of the answering respondent is well within the rules and regulation of its Nigam. Admittedly as per the own case of the petitioner, he was not entitled for the additional increment in the year 1992 which had been given to him inadvertently and erroneously.

That the petitioner has concealed the true and material facts which otherwise were very crucial for the adjudication of the present case. Petitioner knowingly and intentionally has not put forwarded the true and correct facts in the present writ petition."

10. A perusal of the aforesaid would show that reply has been filed by the Nigam in a totally casual and irresponsible manner. The facts of the present case clearly suggest that the action of the respondents was in violation of the law laid down by the Hon'ble Supreme Court in ***State of***

Punjab and others vs. Rafiq Masih (White Washer) and others(Supra) and also the instructions issued by the State but just for the sake of taking an objection in a most casual manner, the aforesaid reply has been filed. Not only this, the reply has been filed by Chief Accounts Officer. It is not understandable as to how a Chief Accounts Officer is competent to file reply in the High Court.

11. Since the action of the respondents in withholding the aforesaid amount from the leave encashment and also without passing any specific order to that regard is *ex facie* illegal and arbitrary, the petitioner shall also be entitled for costs thereon.

12. Consequently, the present petition is allowed. The respondents are directed to pay the petitioner an amount of Rs. 58,296/-, if not already paid, alongwith interest @ 6% per annum to be calculated from date after two months from the date of retirement till the date its actual disbursement within a period of three months from today.

13. Considering the facts and circumstances as aforesaid, a perusal of the order dated 17.11.2020 which would show that the Nigam did not file the reply in time and therefore, a cost of Rs. 5,000/- was imposed. Thereafter on 08.02.2021 since the costs itself were not paid, it was so directed that further costs of Rs. 7,000/- will be imposed in case the reply is not filed within two weeks. Thereafter the Nigam paid a cost of Rs. 5,000/- for filing written statement which is so reflected in order dated 15.03.2023. In this way, the Nigam rather caused delay in the present case. The present reply which has been filed is absolutely in a casual manner and it appears to have been filed in an irresponsible manner when contents of para No.1 and 2 of the preliminary submissions are perused. It appears that the officer who has

filed the reply does not know even the sanctity and meaning of preliminary submissions. The petitioner shall be entitled for costs of Rs. 20,000/- which shall be paid by the Nigam at the first instance within a period of three months from today and thereafter respondent No.1 shall fix the responsibility in accordance with law as to how such a casual reply has been filed and thereafter the aforesaid costs shall be recovered from the responsible officer in accordance with law.

09.02.2024 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking : Yes/No
Whether reportable : Yes/No