2024:PHHC:049529

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-8830-2023

Reserved on : 15.03.2024
Pronounced on : 10.04.2024

Narinder Singh .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

None for respondents No.3 and 4.

NAMIT KUMAR, J.

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 16.03.2023 (Annexure P-7) and letter dated 28.02.2023 (Annexure P-5), whereby a recovery of Rs.11,79,090/- has been ordered to be made from the retiral benefits of the petitioner and further sought a writ of mandamus directing the respondents to release all the retiral benefits of 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 has joined the respondent-Corporation on 28.12.1995 as Baildar-cum-Chowkidar. Thereafter, he was promoted as pump operator on 21.09.2012 and Technician on 28.05.2015 and retired as such, on 31.05.2022, on attaining the age of superannuation. There

was nothing adverse against the petitioner in his entire service record and his retirement was unconditional and without any rider. 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 retiral benefits were not released to the petitioner, he made representation dated 13.07.2022 to the respondents. When no action was taken on the same, the petitioner got served legal notice dated 24.08.2022 upon the respondents for release of his retiral benefits but to no avail. Thereafter, the petitioner approached this Court by filing CWP No.25320 of 2022, which was disposed of vide order dated 06.12.2022, with a direction to respondent No.3 therein, to consider and decide the legal notice served by the petitioner, by passing a speaking and reasoned order, in accordance with law, within a period of three months from the date of receipt of certified copy of the order, after affording an opportunity of hearing to the respective parties. However, instead of releasing the retiral benefits to the petitioner, the respondents issued a show cause notice dated 03.03.2023, stating that a recovery of Rs.11,79,090/- pertaining to period 21.09.2012 to 30.06.2021 is to be made from the retiral benefits of the petitioner. In this regard, a copy of letter dated 28.02.2023 was also supplied to the petitioner. On 07.03.2023, the petitioner appeared before respondent No.3 and submitted his written reply to the show cause notice. However, without considering the reply of the petitioner, respondent No.3 on 16.03.2023 had ordered that the amount of Rs.11,79,090/- is to be recovered from the petitioner as stipulated in letter dated 28.02.2023 and the same would be deducted from the retiral benefits of the petitioner. It has further been ordered that 50% of the amount of pension will be deducted along with full amount of gratuity. Hence this petition.

3. On issuance of notice of motion, reply on behalf of respondents No.3 and 4 has been filed, in which it has been stated as under :-

> *"xx xx xx xx xx*
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> *3.* ***That on 28.05.2015 the petitioner was promoted as Technician his basic pay increased to Rs. 11130/- along with grade pay increased to Rs. 2800/- which comes to total Rs. 14130/- but inadvertently petitioner started getting pay Rs. 19520/- which was in his knowledge but he kept mum.***
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> *4. That moreover sixth pay commission notifications were implemented on local govt employees vide letter no DLG-1539-21/42437 dated 18.10.2021 and same was adopted by Municipal Corporation Kapurthla Vide resolution 61 dated 16.12.2021 and employees pay was fixed on level six level 12 w.e.f 01.01.2016 as per options submitted by employee in factor 2.59 and while pay fixation it has come to the knowledge of department that petitioner is getting extra and thereafter he started getting proper pay as per fixation Rs. 35400/-.*
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> *5. That being an employee of the Municipal Corporation Kapurthala, the petitioner was well aware of the fact that the audit of the Municipal Corporation Kapurthala (then Municipal Council) was not done after 31.03.2012 so taking the benefit of the same petitioner was getting Extra pay from the department. Copy of the said undertaking is enclosed herewith as Annexure R-1/1. Not only this except the said undertaking two more undertakings in the same nature was given by the petitioner and it is very much clear by the Hon'ble Apex Court in CIVIL APPEAL No. 3500 OF 2006 HIGH COURT OF PUNJAB & HARYANA & ORS Versus JAGDEV SINGH by observing* ***"The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an***

> ***undertaking while opting for the revised pay scale. He is bound by the undertaking."***
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> *6. That in view of the above the petitioner is bound by his undertaking and present writ petition filed by the petitioner is liable to be dismissed on this very ground"*

4. Learned counsel for the petitioner submits that the petitioner has retired from service as Technician on 31.05.2022 and after his retirement an amount of Rs.11,79,090/-, being alleged excess payment made to him during the period from 21.09.2012 to 30.06.2021, has been ordered to be recovered from his retiral benefits on 16.03.2023. He submits that no reason has been specified in the impugned letter dated 28.02.2023 and order dated 16.03.2023 as to on what ground the aforesaid recovery has been sought. The alleged recovery sought from the retiral dues of the petitioner is totally illegal, arbitrary and in violation of the law laid down in the judgment of Hon'ble Supreme Court passed in ***State of Punjab Vs. Rafiq Masih (White Washer) and others*** : ***2015(1) S.C.T. 195***.

5. On the other hand, learned State counsel, while referring to the averments made in the reply, submits that the when the petitioner was promoted as Technician on 28.05.2015, his basic pay was inadvertently fixed at Rs.19,520/- instead of Rs.14,130/- and at the time of grant of benefit of 6^{th} Pay Commission, it has come to the knowledge of the Coproration that the petitioner is getting extra pay. He submits that since the petitioner had already given his undertakings in writing to recover any excess payment given to him (Annexure R-1/1T and R-1/2T), therefore, the recovery has been sought from him and the same is as per rules.

6. I have heard learned counsel for the petitioner as well as learned State counsel and perused the relevant documents.

7. It is the case of the petitioner that he stood retired as Technician on 31.05.2022. After his retirement, an amount of Rs.11,79,090/- has been ordered to be recovered from the retiral benefits of the petitioner. However, vide order dated 27.04.2023, the recovery of Rs.11,79,090/- was stayed. On the other hand, the plea taken by the respondents is that at the time of promotion of the petitioner as Technician on 28.05.2015, his basic pay was wrongly fixed as Rs.19,520/- instead of Rs.14,130/- and at the time of grant of benefit of 6th Pay Commission, it has come to the knowledge of the department. Another argument which has been advanced by learned State counsel is that the undertakings (Annexure R-1/1T and R-1/2T) were given by the petitioner and therefore, judgment of ***Rafiq Masih (White Washer) and others case (Supra)*** will not apply.

8. Both the arguments raised by learned State counsel are not sustainable. Firstly, 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 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 the said fixation of pay was made during his service but it was made 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)*** as the reliance placed upon the undertakings will not be relevant in present case.

11. So far as the second argument raised by the learned State counsel that the petitioner had furnished undertakings vide (Annexure R-1/1T and R-1/2T) are concerned, the same is also not sustainable in

view of the fact that the first undertaking i.e. Annexure R-1/T does not contain any date and second undertaking i.e. Annexure R-1/2T pertains to the year 2017-18 and 2018-19, whereas, the alleged recovery pertains to the period from 21.09.2012 to 30.06.2021. Therefore, the furnishing of such undertakings would not be of any avail to the respondent-Corporation. Moreover, such type of undertakings are stereotyped which are generally taken from the employees at the time of their promotion and retirement.

12. Consequently, the present petition is allowed and the impugned order dated 16.03.2023 (Annexure P-7) and letter dated 28.02.2023 (Annexure P-5), whereby recovery has been ordered against the petitioner are quashed and the respondents are directed to release retiral benefits i.e. leave encashment, gratuity provident fund and pension, if not so paid, as entitled, within a period of two months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

10.04.2024
Kothiyal

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