



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

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**CWP-10630-2024
Decided on : 12.07.2024**

Khem Singh

.....Petitioner

Versus

Punjab State Power Corporation Ltd and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. S.K. Rattan, Advocate for the petitioner.

Mr. J.S. Gill, 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, quashing of pay fixation (Annexure P-5), gratuity payment order dated 07.07.2017 (Annexure P-1) and revised gratuity payment order dated 22.05.2023 (Annexure P-4) by which the pay of the petitioner has been re-fixed and reduced and an amount of Rs.40,551/- and Rs.1,45,708/- (total Rs.1,86,259/-) has been recovered from the petitioner, after retirement and further seeking a writ of mandamus, directing the respondents not to reduce and re-fix the pay of the petitioner and also to refund the recovered amount of Rs.1,86,259/-.

3. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner joined the service of the respondents-Corporation on 26.10.1980 as Meter Reader at City Sub Division (Distribution) Malout, District Sri Muktsar Sahib. He was granted first



Time Bound Promotional Scale on completion of 09 years of service w.e.f. 26.10.1989 and further granted 16 years second Time Bound Promotional Scale w.e.f. 26.10.1996 and his pay was revised from time to time. Thereafter, he was promoted to the post of Meter Inspector and joined as such on 16.06.2014 at Distribution Division, Raikot, District Ludhiana and retired as such on 30.06.2017 from Distribution Division, PSPCL, Rampura Phool, District Bathinda. After his retirement he was issued gratuity payment order dated 07.07.2017, whereby an amount of Rs.40,551/- has been recovered/deducted from the gratuity. The petitioner made number of representations to refund the said amount but no action was taken on the same. Thereafter, in view of Finance Circular No.12/2021, pay of the petitioner was revised and revised gratuity payment order dated 22.05.2023 was issued to the petitioner by which an amount of Rs.1,45,708/- was ordered to be recovered from the petitioner by re-fixing and reducing his pay w.e.f. October, 2013 to March, 2022. The petitioner has made various representations to the respondents-Corporation against the abovesaid recoveries but to no avail. Hence this petition.

4. Pursuant to the notice of motion issued on 08.05.2024, learned counsel appearing for the respondents has filed reply in the Court which is taken on record. In the said reply, it has been averred as under :-

“xx xx xx xx xx

4. That the Petitioner retired from service on 30.06.2017 as Meter Inspector from Distribution Division, PSPCL, Rampura Phul, District Bathinda. After his retirement while auditing the file of the Petitioner



it was found that during the year 2015 the Petitioner was wrongly granted one additional annual increment to which he was not entitled. To rectify the said mistake the pay of the Petitioner was re-fixed by the respondents and a recovery of Rs.40,551/- was recovered from the DCRG amount from the gratuity of the Petitioner vide order dated 07.07.2017 (Annexure P-1). As the said amount was rightly recovery from the Petitioner, the Petitioner did not file any writ petition challenging the said order. Now, after a period of 7 years, the present writ petition has been filed challenging order dated 07.07.2017, which is barred by delay as a period of more than 3 years have already passed. Therefore, no challenge can be made to the said order at this stage and the present writ petition is liable to be dismissed on this account alone.

5. *That after the promulgation of Punjab State Power Corporation Limited (revised pay) Regulations, 2021 applicable w.e.f. 1.1.2016, the case of the petitioner was again put up for grant of revised gratuity in terms of the revised pay rules. When the matter was put up for audit, then again it transpired that w.e.f. 1.10.2013 the petitioner was erroneously granted two increments by the corporation and to recover the same a recovery sheet from October 2013 to March 2022 was prepared and from the revised gratuity the amount of Rs.1,45,708/- was recovered from the petitioner vide order dated 22.5.2023. It is even an admitted fact by the petitioner also that he was not entitled to the additional increment which was wrongly granted to him and further there is no averment in the writ petition by the petitioner that he was entitled to the additional increment and his pay has been wrongly fixed by the respondents. In view of such a situation it is humbly submitted that the recovery has been rightly effected from the petitioner as he was not entitled to the increments which were granted to him. Therefore, it is respectfully prayed that the present writ petition may kindly be dismissed.*

6. *That it is further submitted so far the issue raised by the petitioner with regard to the fact that he was not granted an opportunity of hearing prior to effecting the recovery from him, it is humbly submitted that the petitioner has not been able to show that he has been prejudiced because of non grant of opportunity of hearing by the respondents. For the sake of argument,*



even if the petitioner was granted an opportunity of hearing, it would not have made any difference as it is an admitted fact that the petitioner was not entitled to the increments which were wrongly granted to him. Further, it is not neither the case of the petitioner that he was entitled to the additional increments which now have been withdrawn nor any challenge has been made to the refixation of the pay of the petitioner by the corporation from October, 2013 to March 2022. The copy of the Refixation Sheet is annexed as ANNEXURE R-1. Once there is no challenge to the refixation done by the corporation, then the petitioner cannot challenge the recovery on the ground that he was not granted any opportunity of hearing prior to effecting recovery from him as it would not made any difference in the present case.

xx xx xx xx xx”

5. Learned counsel for the petitioner submits that the petitioner has retired from service on 30.06.2017 and after his retirement, an amount of Rs.40,551/- and Rs.1,45,708/- (total Rs.1,86,259/-), being alleged excess payment made to him, have been recovered from him vide impugned orders dated 07.07.2017 and 22.05.2023, respectively. He submits that the impugned recovery orders have been passed 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.***

6. On the other hand, learned counsel for the respondents, while referring to the averments made in the reply, submits that there is no illegality or infirmity in the impugned orders dated 07.07.2017 and 22.05.2023 as the excess payment was made to the petitioner from



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October 2013 to March 2022 and the same is liable to be recovered from the petitioner.

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

8. The stand taken by the respondents-Corporation is that in the year 2015, the petitioner was wrongly given one additional annual increment to which he was not entitled to. To rectify the said mistake, the pay of the petitioner was re-fixed and recovery of Rs.40,551/- was effected from the gratuity of the petitioner vide order dated 07.07.2017. Thereafter, at the time of promulgation of Punjab State Power Corporation Limited (revised pay) Regulations, 2021 applicable w.e.f. 01.01.2016, when the case of the petitioner was put up for grant of revised gratuity, it was found that w.e.f. 01.10.2013, erroneously two increments were granted to the petitioner and to recover the same a recovery sheet from October 2013 to March 2022 was prepared and from the revised gratuity of the petitioner, recovery of of Rs.1,45,708/- has been effected. The stand taken by the respondents-Corporation 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 respondents-Corporation that it was due to some fraud or misrepresentation of the petitioner, who was working against Class III post, that he was granted excess pay but it was granted by the respondents-Corporation on their own.

10. Moreover, the recoveries have been effected by the respondents-Corporation 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.

11. 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)***.

12. Consequently, the present petition is allowed and the impugned orders dated 07.07.2017 and 22.05.2023 (Annexure P-1 & P-4), whereby recoveries to the tune of Rs.40,551/- and Rs.1,45,708/- have been effected from the petitioner, are set aside. The respondent-Corporation is directed to refund the amount of Rs.40,551/- and Rs.1,45,708/- (total Rs.1,86,259/-), deducted from the gratuity and revised gratuity, to the petitioner, within a period of 03 months from the date of receipt of certified copy of this order, along with interest @ 6% per annum from the date the same was effected from the petitioner till its actual payment.

12.07.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

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