



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

LPA No.1524 of 2024

Date of Decision: October 18, 2024.

Municipal Corporation Kapurthala and another

..... APPELLANT (s)

Versus

Narinder Singh and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE SUKHVINDER KAUR**

Present: Mr. Dharminder Singh Randhawa, Advocate
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 10.04.2024 passed by learned Single Bench whereby CWP No.8830 of 2023 filed by respondent-writ petitioner has been allowed.

2. Respondent-writ petitioner filed the abovesaid writ petition for setting aside order dated 16.03.2023 and communication dated 28.02.2023 whereby recovery of Rs.11,79,090/- was ordered to be made from his retiral benefits. He sought a direction to the present appellant-respondents to release complete retiral benefits due to him, alongwith interest at the rate 18% per annum. Writ petitioner

pleaded that he had joined the appellant-Corporation on 28.12.1995 as Beldar-cum-Chowkidar, he was thereafter promoted to the post of Pump Operator on 21.09.2012 and Technician on 28.05.2015. He retired on the said post on 31.05.2022 on attaining the age of superannuation. It was further pleaded that he had unblemished service record, but without any rhyme or reason retiral benefits due to him were not being released, despite representation and legal notice being served upon the respondents. CWP No.25320 of 2022 filed by the writ petitioner was disposed of on 06.12.2022 directing the Corporation to consider and decide the legal notice served upon it by writ petitioner by passing a speaking and reasoned order within a period of three months in accordance with law after affording an opportunity of hearing to the respective parties. Subsequently, show cause notice dated 03.03.2023 was issued to the writ petitioner seeking recovery of Rs.11,79,090/- for the period between 21.09.2012 to 30.06.2021. Reply was filed by writ petitioner, however, vide order dated 16.03.2023 recovery of abovesaid amount was ordered to be made/deducted from retiral benefits of writ petitioner on the premise that excess pay had been released to him for the period in question due to an inadvertent error. It was ordered that 50% of the amount of pension be deducted alongwith full amount of gratuity.

3. Aggrieved therefrom, CWP No.8830 of 2023 was filed by the writ petitioner. The same was contested by the present appellants on the ground that the petitioner had been promoted to the post of Technician on 28.05.2015 upon which his basic pay was increased to Rs.11,130/- alongwith Grade Pay increased to Rs.2800/- i.e., a total of Rs.14,130/- but due to an inadvertent error, petitioner was released the pay of Rs.19,520/- per month. Writ petitioner, it was stated, was cognizant of this fact, but he chose to keep mum. It is at the time of pay fixation,

subsequent to 6th Pay Commission notification, that it came to knowledge of the department that petitioner was getting an extra amount. His pay was accordingly fixed properly thereafter i.e., from 30.06.2021.

4. Learned Single Bench while considering the facts and circumstances of the case, concluded that incorrect fixation of pay of the writ petitioner was not on account of any fraud or misrepresentation of the petitioner, but on account of error by Corporation, therefore, recovery of the said amount was not made out. Writ petition was, accordingly, allowed. Aggrieved therefrom, present appeal has been filed by the Corporation.

5. Learned counsel for the appellants vehemently argued that once incorrect fixation of pay was due to an error or mistake, no benefit can be derived therefrom by the employee who is bound to return the amount incorrectly received by him in excess of what was actually due to him. Learned counsel also referred to two undertakings given by the writ petitioner to the effect that in case there is any error or amendment in the rules or objection raised during audit, he would be bound to make good any excess or additional amount which is paid. It is submitted that judgment of Hon'ble the Supreme Court in **State of Punjab v. Rafiq Masih (White Washer) and others, 2015(1) SCT 195** is distinguishable and not applicable in the present case. In the case of **High Court of Punjab and Haryana and others v. Jagdev Singh, 2016(4) SCT 286**, Hon'ble the Supreme Court, it was argued, had held that an officer who furnished an undertaking while opting for a revised pay-scale shall be bound by the same. In this view of the matter, it was submitted that this appeal be allowed, impugned order dated 10.04.2024 be set aside and the writ petition be dismissed throughout.

6. We heard learned counsel for the appellants and have gone through the file with his able assistance.

7. The factual aspect as narrated in the foregoing paras is not in dispute. The question posed for consideration is as to whether the appellants are entitled to recover the additional amount released to the employee on account of some mistake in their calculations. Writ petitioner was admittedly appointed as Beldar-cum-Chowkidar, a Group 'D' post. He retired on the post of Technician, which is admittedly a Group 'C' post. It is further a matter of record that incorrect amount being released to writ petitioner was not on account of any concealment, fraud or misrepresentation on his part. The matter in hand is, thus, squarely covered in favour of petitioner in view of judgment of Hon'ble the Supreme Court in **Rafiq Masih's case (supra)**. Insofar as the argument raised on behalf of appellants that specific undertakings have been submitted by the writ petitioner, therefore, the recovery should be effected, is also devoid of any merit. Perusal of the first undertaking attached as Annexures R1/1T with the reply filed on behalf of present appellants to the writ petition submitted by writ petitioner, when he was serving as Beldar-cum-Chowkidar is undated and reads as under:-

“I, Narinder Singh Post Beldar-cum-Chowkidar hereby undertake that while fixing my pay in the new pay scale effective from 01.01.2006, if by mistake any error/amendment in rules/objection raised by the audit party, additional amount is paid, then I will pay the additional amount. I will be bound to make the recovery/adjustment out of my salary/pension.”

8. Evidently, the error in calculations does not relate to this period. Second undertaking attached as Annexure R1/2T dated 21.08.2019 is in respect to annual increments for the years 2017-2018 to 2018-2019. Learned Single Bench

has correctly held that such undertakings are not sufficient to negate the claim of writ petitioner. Furthermore, judgment of Hon'ble Supreme Court in **Jagdev Singh's case** (supra) is of no avail to the appellants as the employee in the said case was a Civil Judge (Junior Division) and did not belong to a Group 'C' or 'D' service.

9. Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned order dated 10.04.2024 passed by the learned Single Bench, which calls for interference by this Court.

10. No other argument has been raised.

11. Appeal, being devoid of any merit is accordingly dismissed.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

October 18, 2024.
'om'

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