



CWP-12869-2024

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

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CWP-12869-2024

Date of Decision :06.08.2024

Anil Kumar Garg

...Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Madhu Dayal, Advocate for the petitioner.

Mr. Amar Preet Singh Bains, AAG, Punjab.

Mr. Rahul Sharma, Advocate for respondents No.3 and 5.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present petition, grievance being raised by the petitioner is that the petitioner should be paid pensionary benefits after he has retired from service after attaining the age of superannuation or in the alternative, 10% of the basic salary, which was being deducted from the salary of the petitioner should be refunded back to him along with interest.

Notice of motion.

Mr. Amar Preet Singh Bains, AAG, Punjab accepts notice of behalf of respondent-State and Mr. Rahul Sharma, Advocate accepts notice on behalf of respondents No.3 and 5.

Learned counsel for respondents No.3 and 5 submits that the claim being raised by the petitioner in the present petition is not maintainable as the post on which the petitioner was working was non-

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pensionable post. Learned counsel for respondents submits that once, the post is non-pensionable, the question for the grant of pensionary benefits does not arise.

With regard to the claim of the petitioner for the refund of 10% of the basic salary deducted during his service career, the learned counsel for the respondents submits that keeping in view the instructions given to him by Mr. Vinay Srivastva, General Manager, Institute for Machine Tools Technology Batala, District Gurdaspur, no amount was deducted from the salary of the petitioner hence, question of refund of the same does not arise.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The first grievance of the petitioner is that he is not being paid pensionary benefits after retirement by the respondents.

It is a settled principle of law that to get the pensionary benefits the post has to be a pensionable post under the rules. Nothing has come on record that the post on which the petitioner was working was a pensionable post so as to grant him pensionary benefits upon attaining the age of superannuation. In the absence of any rule shown to this Court to claim pensionary benefits in respect of the post on which the petitioner was working, claim of the petitioner for the grant of pensionary benefits cannot be accepted.

The second argument which is being raised by the learned counsel for the petitioner is that as per the decision Annexure P/4, which was taken in October 1997, it was decided that 10% of the basic salary will

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be deducted to be paid as superannuation allowance at the time of retirement.

Learned counsel for the petitioner submits that the said amount was being deducted from the salary of the petitioner hence, the petitioner is entitled for the refund of the deducted amount along with interest.

Learned counsel for the respondents No.3 and 5 has got his statement recorded on the basis of the instructions received by him from the respondent-department that at one given point of time, a decision was taken to deduct 10% amount from the salary of the employees, which is even reflected in Annexure P/4 but the said scheme was never given effect too and no amount from the salary of even a single employee has been deducted so as to refund them at the time of their retirement and the petitioner was also governed by the said decision as no salary was ever deducted from his salary to be paid as superannuation allowance at the time of retirement.

Keeping in view the above, once the respondents are catagoric that no amount has been deducted from the salary of the petitioner under the column "superannuation", question of refund of the same does not arise.

Keeping in view the above, present petition is dismissed but it is made clear that as the present petition is disposed of on the statement of the learned counsel for the respondents No.3 and 5 in case it is found that the said statement is incorrect, the petitioner will be at liberty to revive the present petition by way of filing appropriate application.

August 06, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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