

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.14127 of 2022 (O&M)
Date of decision: 26.02.2024

Labh Singh
.....Petitioner
Versus
Punjab State Power Corporation Limited and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Jaideep Verma, Advocate
for the petitioner.

Mr. Inderpreet Singh, Advocate
for the respondents.

NAMIT KUMAR J. (Oral)

1. The petitioner, who has rendered 33 years of service in Punjab State Power Corporation Limited, retired on attaining the age of superannuation on 31.03.2020, has approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India, for issuing a writ in the nature of ceritorari, for quashing of the order dated 23.05.2022 (Annexure P-6), whereby a sum of Rs.1,55,042/-, have been recovered from the leave encashment amount.
2. The grievance of the petitioner is that the amount of Rs.1,55,042/- has been recovered from the leave encashment, payable to the petitioner, in violation of the principles of natural justice as neither any opportunity of hearing was provided to the petitioner before effecting the recovery nor any show cause notice was issued to him. The

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reason assigned in the impugned order is that the said amount has been recovered on account of one excess increment granted to the petitioner in the year 2005 and sought to be recovered in the year 2020, due to wrong fixation of pay. No details have been given either in the impugned order or in the written statement filed by the respondents with regard to the details of excess salary paid to the petitioner.

3. On issuance of notice of motion, written statement on behalf of the respondents has been filed, in which it has been stated as under:-

“4. That the averments made by the petitioner are wrong and denied as petitioner was not promoted by the respondents to the post of TG-1/Mech as alleged. In pursuance to appointment letter no.15921 dated 18.11.2005 (Annexure R-1) the petitioner was appointed for the post of TG1/Mech. as he was already working as TG-2/Mech. His name was considered and selected by direct appointment as TG-1/Mech. in the office of C.E/GGSSTP, Ropar on 04.01.2006.

At that time, he was drawing basic pay of Rs.5300 but inadvertently at the time of pay fixation his case was considered as a case of promotion and he was given one increment and his basic pay was fixed at Rs.5500. In the year 2020 as he was nearing to retirement on 31.03.2020 when his service book was got audited and it was pointed out by Account office, GGSSTP, Ropar that at the time of joining as TG-1/Mech on dt. 04.01.2006 he was wrongly given one increment and his basic pay was wrongly fixed at Rs.5500 by mistaking it as a case of promotion when in fact he was not promoted but was selected/appointed as TG-1/Mech directly vide appointment letter. Then his basic pay was on 04.01.2006 was revised and reduced to

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Rs.5300 instead of Rs.5500.

Accordingly, his subsequent increments were refixed in view of clarification issued by Dy. Secy. Fin, PSPCL Patiala vide memo no.19920 dt. 23.04.2015 (Annexure R-2). It was ordered that a recovery of Rs.1,55,042/- be affected from pay of the petitioner. This recovery was for the period of 04.01.2006 to 31.03.2020 up to the date of retirement. The action of the respondents is perfectly legal and as per rules and regulations governing the petitioner.

In view of the submissions made above the present Civil Writ Petition deserves to be dismissed, as the petitioner has no claim against the answering respondents i.e. Punjab State Power Corporation Limited (PSPCL).”

4. Learned counsel for the petitioner submits that the petitioner approached respondent No.2 and duly apprised him that no recovery is pending against him and he never received any communication from the department qua any recovery and, therefore, feeling aggrieved, the petitioner served a legal notice dated 01.02.2022 upon the respondents and when no response was received by him, he approached this Court by way of filing a writ petition i.e. CWP No.5553 of 2022, which was disposed of on 21.03.2022, with a direction to respondent No.2 therein to decide the legal notice within a period of 08 weeks from the date of receipt of certified copy of this order and thereafter, the impugned order dated 23.05.2022 was passed by respondent No.2. Learned counsel for the petitioner further submits that the impugned recovery made by the respondents is totally illegal, arbitrary and in violation of the law laid down by the Hon’ble Supreme Court in the judgment ***“State of Punjab vs Rafiq Masih (White***

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Washer) and others”, 2015(1) SCT 195, and therefore, the said amount is liable to be refunded to the petitioner along with reasonable rate of interest.

5. Learned counsel for the respondents could not dispute the abovesaid legal position, however, opposed the submissions made by learned counsel for the petitioner on the ground that the pay of the petitioner was re-fixed in view of the clarification issued by Deputy Secretary (Finance), PSPCL, Patiala, vide Memo No.19920 dated 23.04.2015.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. The petitioner by way of filing the present petition has impugned the order of recovery by relying upon the law laid down by the Hon’ble Supreme Court in **Rafiq Masih (White Washer) and others case (supra)**. The relevant portion of the said 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.

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(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."

8. 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 and recovery has been effected after the retirement of the petitioner, without giving any opportunity of hearing and without issuing any show cause notice.

9. In view of the above, this Court is of the considered opinion that the respondent/Corporation has not been able to make out a case that the alleged wrong fixation of pay was a result of any misrepresentation/deception or concealment by the petitioner and any order passed at the back of the petitioner, without granting an opportunity of hearing, affecting his civil rights, cannot be sustained and thus, 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)***. Further, the recovery has been ordered by the respondent/Corporation in violation of the principle of natural justice.

10. Consequently, the present petition is allowed and the

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impugned order dated 23.05.2022 (Annexure P-6), is set-aside. The respondents are directed to refund the amount of Rs.1,55,042/-, to the petitioner, within a period of 03 months from the date of receipt of certified copy of this order, along with interest @ 7% per annum.

(NAMIT KUMAR)
JUDGE

26.02.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No