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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-14748-2022

Date of Decision: 31.01.2024

Randhir Singh and another

..... Petitioners

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Damanjeet Singh Batalvi, Advocate for
Mr. Vivek Khatri, Advocate,
for the petitioners.

Mr. H.S. Gill, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned inaction of the respondents by which they have recovered the amount from the retiral benefits of the petitioners in an illegal and arbitrary manner as well as the said action of the respondents is also contrary to the settled proposition of law with a further prayer to refund the recovered amount to the petitioners along with interest @ 18% per annum.

2. The short facts of the present case are that both the petitioners were retired from the respondent-Nigam as an Assistant Foreman which falls in the Category 'D'. Petitioner No.1 retired on 31.08.2021 whereas petitioner No.2 retired on 30.11.2020. After the aforesaid petitioners were

retired on attaining the age of superannuation, the pensionary benefits were calculated and during calculation, an amount of Rs.1,60,428/- qua petitioner No.1 and Rs.1,71,360/- qua petitioner No.2 were withheld and subsequently recovered from the Gratuity of the petitioners. The prayer of the petitioners is that the aforesaid recovery from the Gratuity was without the authority of law and in violation of the law laid down by the Hon'ble Supreme Court in *“State of Punjab and others Vs. Rafiq Masih (White Washer) and others”*, 2015(4) SCC 334.

3. Learned counsel for the petitioners submitted that when the petitioners were in service they were granted increments from time to time and there had been no mis-statement or concealment of any fact from the respondent-Nigam and they themselves granted increments to the petitioners while they were in service but after the retirement when the Gratuity was calculated then the aforesaid amount was recovered from them in view of one letter which was issued by the Additional Chief Secretary, Haryana in the year 2016 pertaining to grant of increments and according to the respondent-Nigam, the petitioners were not entitled to the aforesaid increments. He further submitted that the action of the respondent-Nigam to have recovered the aforesaid amount from the Gratuity of the petitioners, who were working as Class-D employees, was in total violation of the law laid down by the Hon'ble Supreme Court in *Rafiq Masih's case (Supra)* and therefore, a direction may be issued to the respondents to refund the aforesaid amount along with interest.

4. On the other hand, Mr. H.S. Gill, learned counsel for the respondents-Nigam while referring to the reply filed by the Executive

Engineer, OP City Division DHBVN, Bhiwani, submitted that the petitioners were granted the benefit of increments during their service. However, in pursuance of a letter issued by the Additional Chief Secretary, Haryana dated 24.02.2016 vide Annexure R/1 by which such increments could not have been granted to them and therefore, recovery was made from their Gratuity after their retirement. While referring to the reply, he also submitted that both the petitioners had given their respective undertakings that if any excess payment was credited in their account then they will refund the same to the answering respondents. He further submitted that inadvertently the aforesaid undertaking could not be attached along with the reply but a copy of the same being supplied in the Court today. He therefore supplied a copy of the undertaking pertaining to respondent No.2 and a photocopy of the same is hereby taken on record and marked 'X'. He submitted that in view of the latest judgment of the Hon'ble Supreme Court passed in “High Court of Punjab & Haryana and others Vs. Jagdev Singh” **2016(14) SCC 267**, the action of the respondent-Nigam in recovering the aforesaid amount on the basis of the undertaking given by the petitioners was well justified.

5. I have heard the learned counsel for the parties.

6. The petitioners while they were in service were granted increments on their promotion as Lineman on completion of 10 years of regular/satisfactory services. However, later on one letter was issued by the Additional Chief Secretary, Haryana vide letter dated 24.02.2016 (Annexure R-1) and according to the respondents, the petitioners were not entitled to the increments. However, the aforesaid amount was never recovered or

sought to be recovered from the petitioners during the period of their service and it was only after their retirement, the aforesaid amount was sought to be recovered from the Gratuity of the petitioners. The petitioners are stated to be Class-D employees. The Hon'ble Supreme Court in ***Rafiq Masih's case (Supra)*** has laid down law in this regard and the relevant portion of the 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.”

7. As per Clause (i) & (ii), after retirement of the employee, who falls in the Category of C & D, no amount can be recovered from the retiral benefits. Therefore, this Court is of the view that the prayer of the petitioners is squarely covered by the aforesaid judgment of the Hon'ble Supreme Court in *Rafiq Masih's case (Supra)* and no amount can be recovered after their retirement especially when the petitioners fall in Category 'D'. So far as the ground taken by the respondents in their reply that the petitioners had given an undertaking that if any excess payment is credited in their account, then they will refund the same to the respondents is concerned, a perusal of the undertaking which has been so filed in the Court today and marked as 'X' as aforesaid, it would show that such an undertaking has been given after the retirement at the time when the petitioners were to be given their pension and their DCRG. The aforesaid undertaking given by petitioner No.2 is reproduced as under:-

“Undertaking for refund of pension & DCRG paid excessively to which I may be actually entitle.

1) Undertaking to refund any amount of pension & DCRG paid to me in excess of that to which I may be actually entitle.

2) I here by declare that I have neither applied nor received any pension or gratuity and death-cum-retirement gratuity in respect of any portion of service including in this application in respect of which pension or gratuity claimed herein nor shall I submit any

application hereafter without quoting any reference to this application and other which may be passed.

3) In case any outstanding recovery is found after releasing of pension I hereby give my consent to recover the same from my subsequent payment of monthly pension.

Sd/-

*RTI or singature of Applicant
Full Name Kailash Chander, AFT”*

8. A bare perusal of the same would show that it was only after retirement that such undertaking was given by the petitioners. The law which has been laid down by the Hon’ble Supreme Court in *High Court of Punjab & Haryana and others Vs. Jagdev Singh (supra)*, was that when a benefit is given to the employee and an undertaking is furnished by the employee that he will refund the amount in case it is found to be excessive or not admissible then after the retirement the same can be refunded on the basis of undertaking. However, so far as the present undertaking as filed by the learned counsel for the respondents in Court today and marked ‘X’ is concerned, the same was not given at the time of grant of benefit and it was given after the retirement and this Court is rather of the view that such kind of undertaking taken from an employee is a coercive method because such kind of undertaking after the retirement at the time of disbursal of pension and pensionary benefits, is *non est* in the eyes of law and cannot be enforced especially being unconscionable. Therefore, the aforesaid judgment of the Hon’ble Supreme Court passed in *Jagdev Singh’s case (supra)*, is distinguishable from the present case and is not applicable to the present case and on the other hand, the prayer of the petitioners is rather

covered by the judgment of the Hon’ble Supreme Court in *Rafiq Masih’s case (Supra)*.

9. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents are directed to refund the amount which was recovered from the Gratuity of the petitioners within a period of three months from today along with interest @ 6% per annum.

10. In case, the aforesaid amount is not paid to the petitioners within a period of three months from today, then the petitioners shall be entitled to future interest @ 9% per annum instead of 6% per annum. The petitioners shall also be entitled to the costs of Rs.5,000/- per petitioner.

11. At this stage, it will also be relevant to note that a perusal of the reply filed by the Executive Engineer would show that rather strong objection has been taken that the petitioners have not approached this Court with clean hands and filed the present petition having knowingly concealed the true material facts to misguide this Court and to draw a desirable result in their favour. Aforesaid objection has been incorporated in Para 4 of preliminary submissions of short reply. However, there is nothing on the record to show as to how the petitioners have misguided and how they have concealed true and material facts to draw desirable results. Therefore, it is directed that the aforesaid costs shall be paid by the Executive Engineer, who has filed the present reply from his own pocket and not from the State Exchequer.

31.01.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |