

CWP-15862 of 2015

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

CWP-15862 of 2015

Date of decision: 16.02.2024

Ashok Kumar

.....Petitioner

Versus

Punjab State Transmission Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. J.S. Jaidka, Advocate, and
Mr. Abhishek Khullar, Advocate, for the petitioner.

Ms. Yukti Garg, Advocate,
for Mr. T.S. Sidhu, Advocate, for the respondents.

NAMIT KUMAR, J.

1. Petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a writ of *certiorari* for quashing order dated 11.05.2015 (Annexure P-1), whereby on account of re-fixation of pay w.e.f. 01.01.2006, recovery of Rs.1,26,795/- has been ordered against the petitioner.

2. This Court, while issuing notice of motion on 04.08.2015, stayed the recovery from the petitioner.

3. The case set up by the petitioner in the present writ petition is that he joined the respondent-Corporation as a Telephone Attendant on 29.04.1988 and he was due to be promoted as Lower Division Clerk in the year 2004, however, he decided to forego his promotion and thereafter he was promoted as Lower Division Clerk in the year 2009. Thereafter, vide order dated 11.05.2015, recovery of Rs.1,26,795/- was ordered from the petitioner. The petitioner submitted representation

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dated 17.06.2015 against the said recovery, however, nothing has been done by the respondents. Therefore, the petitioner has approached this Court by way of filing the present writ petition by impugning the order dated 11.05.2015.

4. Separate written statements have been filed by respondents No.1 & 2 and No.3. In the written statement filed by respondent No.3, it has been stated as under: -

“5. That the service book of the petitioner was sent to A.O. Corporate Audit P.S.T.C.L. Patiala for Audit Scrutinize by the C.E. P&M, P.S.T.C.L, Patiala after the age of attaining of 50 years by the petitioner. The A.O. Corporate Audit P.S.T.C.L., Patiala during scrutinizing the service book raised observations vide his office memo no.1040 dated 12/2/15. As per objections no.3, the pay of the petitioner fixed on 01.01.2006 in the revised scale is not permissible, which was required to be fixed in revised scale 5100-10680+1850 instead of 6400-20200+3200, because the petitioner had forego his promotion and his pay fixed in 1st and 2nd time bound scales were held in abeyance in 2006. In compliance of the above objection the pay of the petitioner was re-fixed in the revise scale w.e.f. 1.1.2006 as under: -

<u>Already fixed as on 01.01.2006</u>	<u>Refixed as on 01.01.2006</u>
Prerevised scale 4600-7250	Pre.Revise Scale 2930-5300
Revise scale 6400-20200+3200	Revise scale 6400-20200+3200
G.Pay	G.Pay

7. That as per above fixation of pay the recovery of Rs.126795/- has been worked out. It is clarified that the pay of the petitioner was held-in-abeyance for the benefit of time bound promotions scales granted to the petitioner for the period 4.6.2004 to 19.2.09 and benefits restored from 20.02.2009 on joining to promoted post. The recovery of

*outstanding amount has been ordered as per Secy./Eng.II/PSEB, Patiala memo no.1804/Eng/G.582 dated 08.04.2003, the copy of which is attached herewith as **Annexure R-3/5**.*

8. *That the petitioner has also concealed that petitioner had furnished undertaking that in case of any excess payment on account of wrong fixation of pay, the petitioner would be liable to refund the same or the same would be recoverable, either by adjustment against future payment or in monthly installments from monthly salary/pension or from any other pay arrear or pension arrear and so, now the petitioner cannot withheld the said amount. The copy of undertaking furnished by the petitioner is attached herewith as **Annexure R-3/6**. ”*

5. Learned counsel for the petitioner submitted that the recovery order passed against the petitioner is totally illegal and arbitrary as the pay scale was granted by the respondents and there is no misrepresentation or fraud on the part of the petitioner and the said recovery is against the law laid down by the Hon’ble Supreme Court in ***State of Punjab v. 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 written statements, submits that since the petitioner was granted higher pay scale than his entitlement, therefore, on the objections raised by the audit authorities, pay of the petitioner has been re-fixed and recovery of Rs.1,26,795/- has been ordered, vide impugned order, which is perfectly legal and valid, especially when the petitioner had given undertaking (Annexure R-3/6) to refund the excess amount. She has placed reliance upon the judgment

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of the Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh : 2016(14) SCC 267.***

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

8. During the course of hearing, it has been pointed out by learned counsel for the petitioner that the petitioner has already retired from service during the pendency of the present writ petition.

9. Both the arguments raised by learned counsel for the respondent-Corporation are not sustainable. Firstly, even if an excess amount on the basis of wrong fixation of pay while granting benefit was paid to the petitioner, the same cannot be recovered from him. The action of the respondent-Corporation is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih's*** case (supra) particularly in view of the fact that the petitioner never mis-represented and further the petitioner was working on Class-III post and the said recovery belongs to the period from 01.01.2006 onwards and the order of recovery has been passed in the year 2015. The relevant portion of the aforesaid 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.”

10. The facts and circumstances of the present case suggest 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 a period of nine years.

11. So far as the second argument raised by the learned counsel for the respondent-Corporation that the petitioner had furnished an undertaking (Annexure R-3/6) is concerned, the same is also not sustainable in view of the fact that the same is undated and stereotyped undertaking as also generalized in nature. Therefore, the furnishing of such an undertaking would not be of any avail to the respondent-Corporation. In ***Jagdev Singh's*** case (supra), the Hon'ble Supreme Court was dealing with a particular situation whereby before granting the

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benefit of pay-scale to the employees, an undertaking was taken from the employees with regard to the fact that in case there is some recovery which is to be made thereafter, then the employees will have no objection with regard to the same and in this way, the employees were already put to notice with regard to a specific benefit which was to be conferred upon them. However, in the present case, the benefit granted to the petitioner w.e.f. 01.01.2006 onwards has been withdrawn in 2015 and now during the pendency of the present petition, the petitioner has retired, therefore, the facts and circumstances of the present case are totally distinguishable from the aforesaid judgment in ***Jagdev Singh's*** case (supra).

12. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by the judgment of Hon'ble Supreme Court passed in ***Rafiq Masih's*** case (supra) as the reliance placed upon the undertaking will not be relevant in present case.

13. Consequently, the present writ petition is allowed and the impugned order dated 11.05.2015 (Annexure P-1) whereby recovery of Rs.1,26,795/- has been ordered against the petitioner, is quashed. If any amount has been recovered from the petitioner, the same shall be refunded to him within a period of two months from the date of receipt of certified copy of this order.

16.02.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No