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

CWP-20263 of 2015 (O&M)
Date of decision: 25.01.2024

Chander Mohan Sharma
......Petitioner

Versus

Punjab Water Supply and Sewerage Board
......Respondent

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. Ravish Bansal, Advocate,
for the petitioner.

Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Anirudh Gupta, Advocate,
for the respondent.

**NAMIT KUMAR, J.**

**CM-14404-CWP of 2021**

1. This application has been filed by the petitioner-applicant for placing on record the information received under the RTI Act as Annexure P-10.

2. For the reasons mentioned in the application, same is allowed. Annexure P-10 is taken on record subject to all just exceptions.

**CWP-20263 of 2015**

1. The petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India seeking writ of *mandamus* for directing the respondent to release the withheld salary for the month of February 2015 amounting to Rs.60,581/- and

remuneration for extra work done by the petitioner @ 10% amounting to Rs.51,498/- (being 10% of Rs.48,520+Rs.8,700) for nine months as well as notice pay amounting to Rs.54,359/- and total being Rs.1,66,438/- and also to refund an amount of Rs.93,907/-, which was got deposited from the petitioner by the respondent.

2. Brief facts, as have been pleaded in the present petition, are that petitioner was earlier working as a Superintending Engineer with the Punjab Small Industries and Export Corporation (hereinafter referred to as 'PSIEC') and retired as such on attaining the age of superannuation on 31.08.2010 and was drawing the basic pay of Rs.48,520+8,700=57,220/- and dearness allowance of Rs.25,749/-. Thereafter he was appointed as Superintending Engineer in the Punjab Water Supply and Sewerage Board (hereinafter referred to as 'Board') on contract basis vide appointment letter dated 28.02.2014. Salary of the petitioner was payable as per Clause-1 of the appointment letter, which reads as under:

> *"1. You will be paid monthly salary as **50% of the Basic Pay plus DA last drawn at the time of retirement** in case you retired from the Board/Corporation or any other department where pension is not admissible. In case you have retired from the Govt or any other Department where pension is admissible, you shall be paid monthly pay of last pay drawn minus pension except the house rent."*

After he joined the Board on contract basis, he was being paid salary of Rs.41,485/- i.e. 50% of the basic pay plus grade pay plus DA i.e. Rs.82,969/- as his basic pay at the time of retirement was Rs.48,520/-; grade pay Rs.8,700/- and DA Rs.25,749/-. However, in the month of August 2014, when he was incharge of the accounts department as well, he had drawn salary of Rs.54,359/-, which was calculated by considering 50% of the basic pay of Rs.41,520/- plus total amount of grade pay of Rs.8,700/- and DA of Rs.25,749/- instead of 50% of the total amount of these three components and consequently also paid arrears on account of increase in the salary from the date of appointment.

3. Petitioner performed his duties upto February 2015 and was relieved from service and when this fact came to the notice of the Board, excessive amount was got adjusted in the salary for the month of February 2015 and vide communication dated 28.02.2015, petitioner was directed to deposit the remaining amount of Rs.93,907/- with the Board and in pursuance thereof, petitioner sent a cheque of Rs.93,907/-.

4. Learned counsel for the petitioner contended that the amount of Rs.93,907/- was got deposited from the petitioner under duress and since there is no mis-representation on the part of the petitioner, therefore, the said amount is liable to be refunded to the petitioner and also he is entitled for salary for the month of February 2015. He submitted that the case of the petitioner is covered by the judgment of the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq Masih and others, 2015(1) SCT 195***.

5. On the other hand, learned Senior Counsel for the respondent-Board submitted that petitioner was entitled for his salary which was to be computed by considering last pay drawn by the petitioner plus DA last drawn and consequently he was rightly paid monthly salary of Rs.41,485/- which was 50% of his emoluments of

Rs.82,969/-, which he was drawing at the time of his retirement from the PSIEC. However, he being incharge of the accounts department got his salary increased from Rs.41,485/- to Rs.54,359/- and got arrears from February 2014 to August 2014 and when this fact came to the notice of the Board, the said amount was ordered to be recovered from the petitioner. Since the petitioner was the incharge of the accounts section in the month of August 2014, his salary was revised and arrears from February 2014 onwards were granted to him, therefore, his case would not be covered by the judgment of the Hon'ble Supreme Court in ***Rafiq Masih's*** case (supra).

6. I have heard learned counsel for the parties and perused the record.

7. Admittedly, as per Clause-1 of the appointment letter dated 28.02.2014 (Annexure P-2), petitioner was entitled to the monthly salary to the tune of 50% of the basic pay plus DA last drawn by the petitioner at the time of his retirement from the PSIEC. His basic pay at the time of retirement was Rs.48,520/-; grade pay Rs.8,700/-; DA Rs.25,749/- totalling Rs.82,969/- and he was rightly paid 50% of this total amount of Rs.82,969/- i.e. Rs.41,485/-. However, later on his salary was again recalculated in the month of August 2014 to Rs.54,359/- by considering 50% of the basic pay and whole amount of grade pay and DA and he was also paid the arrears from February 2014 onwards and he drew the said salary paid upto the month of January 2015 and when this fact came to the notice of the Chief Executive Officer of the Board, excess amount of Rs.1,66,438/- was got adjusted in the salary for the month of February

2015 and he was directed to deposit amount of Rs.93,907/- which the petitioner had deposited with the Board. In this manner, the petitioner got the benefit of enhanced salary to which he was not entitled to in terms of Clause-1 of the appointment letter and since he was incharge of the accounts branch in the month of August 2014, it could not be said on behalf of the petitioner that there is no mis-representation on his part, therefore, the ratio laid down in the case of ***Rafiq Masih's case (supra)*** would not be applicable to the case of the petitioner. The relevant portion of the said judgment is reproduced as under: -

> *"11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.*
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> *(i). Reference may first of all be made to the decision in* ***Syed Abdul Qadir v. State of Bihar, 2009(1) S.C.T. 611 : (2009) 3 SCC 475****, wherein this Court recorded the following observation in paragraph 58:*
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> > *"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any*

> *particular case, order for recovery of the amount paid in excess. See* ***Sahib Ram v. State of Haryana, 1995(1) S.C.T. 668 : 1995 Supp. (1) SCC 18, Shyam Babu Verma v. Union of India, 1994(2) S.C.T. 296 : (1994) 2 SCC 521, Union of India v. M. Bhaskar, 1996(4) S.C.T. 57 : (1996) SCC 416, V. Ganga Ram v. Director, 1997(3) S.C.T. 72 : (1997) 6 SCC 139, Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709, Purshottam Lal Das v. State of Bihar, 2006(4) S.C.T. 537 : (2006) 11 SCC 492, Punjab National Bank v. Manjeet Singh, 2006(4) S.C.T. 570 : (2006) 8 SCC 647*** *and* ***Bihar SEB v. Bijay Bahadur, (2000) 10 SCC 99.****"*

8. Moreover, the other Superintending Engineers, who were also appointed on contract basis were also given the pay on the same line, therefore, the petitioner cannot claim salary on higher rate.

9. No other point has been urged.

10. In view of the foregoing discussion, present writ petition is dismissed with no order as to costs.

**(NAMIT KUMAR)**
**JUDGE**

25.01.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No