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

CWP-14683 of 2018
Reserved on: 06.02.2024
Pronounced on: 19.02.2024

Mohan Singh

......Petitioner

Versus

Punjab State Power Corporation Ltd. and others

......Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. S.K. Rattan, Advocate,
for the petitioner.

Mr. Rishabh Gupta, Advocate,
for respondents No.1 to 4.

Mr. Rajesh Hooda, Advocate,
for respondent No.5.

NAMIT KUMAR, J.

1. Petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* quashing the refixation of his pay w.e.f. 08.04.1999 to 31.07.2012 vide memo dated 01.11.2012 (Annexure P-6), without issuing any show-cause notice or granting an opportunity of hearing and letter dated 05.09.2013 (Annexure P-7) by which an amount of Rs.52,229/- has been ordered to be recovered from the gratuity of the petitioner and for quashing of the impugned recovery of Rs.23,641/- of employees provident fund share on account of loan of Rs.12,500/-, made from the petitioner vide calculation sheet dated 10.12.2014 (Annexure P-3).

2. Brief facts, as have been pleaded in the present petition, are that the petitioner joined the respondent-department as work charge employee on 23.10.1981 and was regularised as Assistant Lineman (ALM) on 02.09.2002 and retired as ALM, which is Class-III post, on attaining the age of superannuation on 31.07.2012. It has further been averred that petitioner submitted representation for counting of his work charge service w.e.f. 23.10.1981 to 02.09.2002 for pensionary benefits and said work charge service was counted/regularised for grant of pension and other pensionary benefits and an amount of Rs.1,29,476/-, which was calculated as employees provident fund share by the respondents, was deposited by the petitioner vide receipt dated 16.07.2012 (Annexure P-1). It has further been averred that petitioner received a sum of Rs.12,500/- as advance from employees provident fund share on 28.10.1996. However, a sum of Rs.23,641/- i.e. (Rs.12500+Rs.11141 as interest) has been deducted from the arrears paid to the petitioner and a sum of Rs.52,229/- has been deducted from the payment of gratuity of the petitioner. It has further been averred that his retiral dues have been released on 11.02.2015, after a delay of two years and seven months.

3. Pursuant to notice of motion, separate replies have been filed on behalf of respondents No.1 to 4 – PSPCL and respondent No.5- Regional Provident Fund Commissioner, Jalandhar.

4. In written statement filed by respondents No.1 to 4 it has been stated as under: -

> *"5. That the contents of para No. 5 of the writ petition is a matter of record. The CAO, EAD, PSPCL, Patiala raised*

an objection vide memo no. 14883 dated 01/11/2013 regarding re-fixation of the pay fixation of petitioner relates to work charge period w.e.f. 01/04/1998. The petitioner was working as work charge under Additional S.E., Mukerian Hydel Canal O&M division, Talwara. So, the pay was re fix by the Additional S.E., Mukerian Hydel Canal O & M division, Talwara which is 4775+75/-. Rs.75/- is an Additional Pay (A.P.) as on 1/4/1998 instead of Rs. 4850/- and the Additional Pay was absorbed in next increment. Then the pay was fixed at Rs. 4950/- w.e.f. 01/01/1999 instead of Rs. 4950+75/- A.P. The recovery relates to Additional S.E., Mukerian Hydel Canal O & M division, Talwara from 01/01/1999 to 01/09/2002 calculated to Rs. 320/- and the same was deposited by the petitioner itself vide PSPCL receipt no. BA-16-84/45170. The remarks was recorded on the page no. 21 of work charge period service book by Additional S.E., Mukerian Hydel Canal O&M division, Talwara the relevant extract is being attached as Annexure R-3. In continuation of this fixation the pay of regular service period was also re-fixed on page no. 34 and 36 of regular period service book which is attached as Annexure R-4. The Accounts Officer, EAD, PSPCL, Patiala recorded the condition at the time of finalization of service book that to ensure the recovery of Rs. 52229/-10 be made from Gratuity on page no. 38 of the regular period service bool. which is being attached as Annexure R-5. The petitioner has already given an undertaking regarding recovery of any wrong pay fixation. So the recovery affected is lawful and there is no need to give any notice regarding recovery.

x x x x x

8. The contents of para No. 8 of the writ petition are denied on the ground that the delay of grant of pension is due to the length of regular service is less than 10 years *and due to regularization the work charge service towards pensioner benefits. The period of work charge service counted towards pensionary benefits only after depositing the entire calculated amount into PSPCL account by the applicant. In this case the petitioner gave his duly attested self-declaration for deducting the less deposited EPF amount from his gratuity on dated 15/12/2014. After clearing the objections in work charge service book Addl. S.E, Industrial Division, PSPCL, Amritsar issue the office order no. 215 dated 24/12/2014 regarding counting of work charge service towards pensionary benefits. With the result the CAO/Pension Audit, PSPCL, Patiala issue the Pension Payment order and Gratuity payment order on dated 11/02/2015."*

5. In nutshell, the reasoning given for recovery of Rs.52,229/- is that due to refixation of pay of the petitioner, the said recovery has been effected. It has further been submitted that petitioner had given two undertakings dated 19.11.2014 (Annexure R-7/1) and undated undertaking (Annexure R-7/2) to refund the excess amount. With regard to delay in release of retiral benefits, it has been stated that since the work charge service of the petitioner has been taken into account for grant of pensionary benefits, therefore, some delay has occurred, which is not intentional.

6. Learned counsel for the petitioner argued that since there was no mis-representation or fraud committed by the petitioner, therefore, no recovery can be made from the petitioner and recovery amount of Rs.52,229/- is liable to be refunded to the petitioner. In support of the said contention, he has placed reliance on the judgment of the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq***

Masih (White Washer) and others, 2015(1) SCT 195. He further submitted that petitioner is also entitled for grant of interest on the delayed payment of retiral dues and has placed reliance upon Full Bench judgment in ***A.S. Randhawa v. State of Punjab and others, 1997(3) S.C.T. 468*** and Co-ordinate Bench judgment in ***J.S. Cheema v. State of Haryana, 2014(13) RCR (Civil) 355***. He further submitted that since advance of Rs.12,500/-, taken by the petitioner was from the employee's share, therefore, recovery made by the respondent-department of Rs.23,641/- is totally illegal. Learned counsel for the petitioner at the time of arguments has submitted that he has confined the scope of the present petition only to the extent of recovery.

7. *Per contra,* learned counsel for respondents No.1 to 4 submitted that a sum of Rs.52,229/- has been recovered from the petitioner on account of wrong fixation of his pay, which has rightly been recovered from the petitioner on the basis of undertakings (Annexures R-7/1 and R-7/2) given by the petitioner and the petitioner is not entitled to interest on delayed payment on retiral dues as the same was not intentional and was on account of counting work charge service of the petitioner for grant of pensionary benefits. He contended that present case is covered by the judgment of the Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh : 2016(14) SCC 267***.

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

9. Admittedly, petitioner retired from service on attaining the age of superannuation on 31.07.2012 and has been released his retiral dues on 11.02.2015 after a delay of two years and seven months. A sum of Rs.52,229/- has been recovered from the gratuity amount of the petitioner on account of refixation of his pay. The action of the respondents is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (Supra)*** particularly in view of the fact that the petitioner retired as Assistant Lineman which falls in Class III (Group 'C' Category). 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-IIIand 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 respondents that it was due to some fraud or mis-representation of the petitioner that the said fixation of pay was made during his service but it was made by the respondents on their own and recovery has been effected after the retirement of the petitioner without issuing any show cause notice to him.

11. Since a sum of Rs.1,29,476/- was already got deposited from the petitioner on 16.07.2012 vide Annexure P-1 on account of calculation of interest of payment of EPF for counting work charge service of the petitioner and the said amount was deposited by the petitioner before his retirement, therefore, apparently there is a delay in release of retiral dues of the petitioner and he is entitled for interest after completion of three months from the date of retirement till 11.02.2015, when the retiral dues were released to the petitioner.

12. So far as the second argument raised by the learned counsel for respondents No.1 to 4 that the petitioner had furnished undertakings vide Annexures R-7/1 and R-7/2 is concerned, the same is also not sustainable in view of the fact that one of the undertakings i.e. Annexure R-7/1 is dated 19.11.2014, which is after his retirement and is a stereotyped undertaking and is also generalized in nature. Undertaking, Annexure R-7/2 does not contain any date which indicates the time period thereof. Therefore, the furnishing of such an undertaking would not be of any avail to the respondent-Corporation. In the case of ***Jagdev Singh's*** (supra), the Hon'ble Supreme Court was dealing with a particular situation whereby before granting the 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 petitioner had already retired in the year 2012 whereas the benefit has been granted in the year 2015 and therefore, the facts and circumstances of the present case are totally distinguishable from the aforesaid judgment in ***Jagdev Singh's case (supra)***.

13. So far as recovery of Rs.23,641/- is concerned, respondent No.5 – Regional Provident Fund Commissioner, Jalandhar, in its reply has submitted that neither the said amount has been deducted by respondent No.5 nor any direction was given to respondents No.1 to 4 to deduct the same from the gratuity of the petitioner. Relevant portion from para 1 of the written statement of respondent No.5 is as under: -

> *"…….Further prayer of the petitioner is for quashing the impugned recovery of Rs.23,641/- of EPF Share on account of some loan taken by the petitioner and also to refund the same with 12% interest. It is respectfully submitted here that the answering respondent is dealing with the amount of Employees Provident Fund of the employees and has neither deducted any amount nor any direction was given to the respondents no. 1 to 4 to deduct the same from the gratuity of the petitioner. Therefore, the writ petition filed by the Petitioner qua the answering respondent may kindly be dismissed as the answering*

respondent is not a proper and necessary party and has been unnecessarily impleaded as respondent."

14. In view of the above, present petition is allowed. Respondents No.1 to 4 are directed to refund the amount of Rs.52,229/- and Rs.23,641/- to the petitioner, which have wrongly been recovered from the gratuity of the petitioner along with interest @ 6% per annum from the date of recovery till the date of payment. Petitioner shall also be entitled for grant of interest @ 6% per annum on the delayed retiral dues after completion of three months from the date of retirement till the date of actual payment. The said benefit shall be released to the petitioner within a period of three months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

19.02.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No