

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

230

CWP-18326-2020

Date of Decision : 18.01.2024

Vinod Kumar

.....Petitioner

Versus

The Punjab State Power Corporation Ltd. and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Pankaj Sharma, Advocate for the petitioner.

Mr. Rishab Gupta, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India for quashing the order dated 06.02.2020 (Annexure P-12), whereby an amount of Rs.3,24,260/- has been recovered from the Gratuity of the petitioner after retirement of the petitioner on 30.04.2019. Further directions have been sought to the respondents to release the amount of Gratuity and also restore the salary of the petitioner which has been re-fixed from 01.01.1996 to 30.04.2019.

2. Brief facts leading to the filing of the present petition, as have been pleaded in the writ petition, are that initially, the petitioner was appointed as Work Charge Store Attendant on 06.03.1980 at Central Store Verka at Amritsar. Thereafter, on 09.08.1984, he was promoted as regular Lorry Cleaner. Vide office order dated 24.09.1992, the petitioner also got 8 years proficiency step up w.e.f. 22.08.1992. During his

service, the petitioner also got 9 years time bound promotion scale on 22.08.1993. On 23.04.1992, he was promoted as skilled worker/helper and on 27.03.1996, he was further promoted as Assistant Lineman. However, vide office order dated 11.03.1997, he was reverted back as skilled worker/helper. Aggrieved against the said order, the petitioner has filed a Suit for declaration and permanent injunction against the respondent-Board which was decreed in his favour vide judgment and decree dated 10.12.2005 passed by learned Civil Judge (Junior Division), Amritsar and the respondent-Board again promoted the petitioner as Assistant Lineman and his salary was also fixed accordingly. Further the petitioner was promoted as Lineman on 22.01.2013 and he retired as such on 30.04.2019. After his retirement, respondent No.4-Account Officer, Employees Audit Department, PSPCL, Patiala raised certain objections on 13.05.2019. The office of respondent No.3-Senior Account Officer, Central Payment Cell, City Circle, PSPCL, Amritsar while giving reply cleared all the objections raised by respondent No.4. However, respondent No.4 was not satisfied with the reply of respondent No.3 and accordingly vide letter dated 21.06.2019 raised another objection with regard to ALM appointment, 16 years time bound scale and asked to re-fix the pay and make out the recovery. Respondent No.3, in pursuance to the said letter again submitted reply dated 08.07.2019 to the office of respondent No.4 and once again respondent No.4 was not satisfied with the reply. Thereafter, respondent No.4 again raised objections vide its letter dated 13.08.2019 and 25.09.2019 in which it was asked to give the reason for fixing the

salary of the petitioner at Rs.5,125/- w.e.f. 01.08.2004 and also asked to recover the amount by re-fixing the salary. Accordingly, respondent No.3 on the asking of respondent No.4 prepared the calculation sheet, re-fixed the salary of the petitioner from 01.01.1996 to 30.04.2019 and recovered the amount of Rs.3,24,260/- from the gratuity of the petitioner.

3. Written statement on behalf of the respondents has been filed. Para 2 of the written statement reads as under :-

“That it is worthwhile to state here the petitioner Sh. Vinod Kumar became regular employee of PSPCL erstwhile PSEB on dated 22/8/1984 as lorry cleaner and again re-designated as skilled worker/helper on dated 23/4/92. Two Promotional increment were wrongly given on dated 28/03/1996 when he was promoted as Assistant Lineman. This mistake was highlighted by CAO/EAD, Patiala when the service book was sent to their office for post audit at the time of retirement as the post of Assistant Lineman is a placement from the post of skilled worker/helper and is not a promotion. The petitioner gave his undertaking in writing to recover any excess payment given to him, in any case, twice. First at the time of opting for the revised pay scales and second at the time of retirement. Thus the recovery affected from the petitioner is as per rules and then the present petition is liable to be dismissed.”

4. Learned counsel for the petitioner submits that the petitioner has retired from the service as Lineman on 30.04.2019 and the recovery of Rs.3,24,260/- from his gratuity has been effected on 06.02.2020 on the ground that the benefit of two increments, which was given to the petitioner on his promotion as ALM on 28.03.1996, the same was wrongly given and accordingly, the salary has been re-fixed

from 01.01.1996 and the said benefit has been withdrawn now in the year 2020 only on the asking of respondent No.4, by way of objection being raised on the service book of the petitioner. He further submits that the recovery has been effected from the petitioner without any office order being passed by the competent authority and without issuance of any show cause notice or personal hearing, which is not only in violation of the principles of natural justice but also against the law laid down in judgment of the Hon'ble Supreme Court passed in ***State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195***. 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.

5. On the other hand learned counsel for the respondents, while referring to the averments made in the written statement, submits that the petitioner became regular employee of PSPCL on 22.08.1984 as Lorry Cleaner and again re-designated as skilled worker/helper on 23.04.1992. Two promotional increments were wrongly given to the petitioner on 28.03.1996, when he was promoted as Assistant Lineman as the post of Assistant Lineman is a placement from the post of skilled worker/helper and is not a promotion. Since the petitioner already gave his undertaking in writing to recover any excess payment given to him, therefore, the recovery has been effected from him and the same is as per rules.

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

7. It is the case of the petitioner that he had retired as Lineman on 30.04.2019. After his retirement, an amount of Rs.3,24,260/- has been recovered from the gratuity of the petitioner. The plea taken by the respondents is that the benefit of two promotional increments was wrongly given on 28.03.1996 and the said mistake has been rectified. As per reply filed by the respondent-Corporation, the mistake was detected by the Audit Department and that is why recovery has been effected. Another argument which has been advanced by learned counsel for the respondent-Corporation is that an undertaking was given by the petitioner at the time of accepting the increment and retirement and therefore, judgment of ***Rafiq Masih (White Washer) and others case (Supra)*** will not apply.

8. 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 w.e.f 01.01.1996 was paid to the petitioner, the same cannot be recovered from him after his retirement. The action of the respondent-Corporation 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 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-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."

9. 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 the retirement of the petitioner without issuing any show cause notice to him.

10. So far as the second argument raised by the learned counsel for the respondent-Corporation that the petitioner had furnished an undertakings vide Annexures R-1 and R-2 are concerned, the same are also not sustainable in view of the fact that one of the undertakings i.e.

Annexure R-2 was given by the petitioner at the time of retirement

which is a stereotyped undertaking and is also generalized in nature. Undertaking, Annexure R-1, furnished by the petitioner also do 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 ***High Court of Punjab & Haryana and others Vs. Jagdev Singh : 2016(14) SCC 267***, 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 2019 whereas the benefit has been granted in the year 1996 and therefore, the facts and circumstances of the present case are totally distinguishable from the aforesaid judgment in ***Jagdev Singh's case (supra)***.

11. 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 (White Washer) and others case (Supra)*** as the reliance placed upon the undertakings will not be relevant in present case.

12. Further, the recovery has been ordered by the respondents in violation of the principle of natural justice as neither any show cause

notice was issued to the petitioner nor he was granted an opportunity of personal hearing.

13. Consequently, the present petition is allowed and the impugned order dated 06.02.2020 (Annexure P-12) whereby recovery has been effected from the petitioner is quashed. Respondents are directed to refund the amount of Rs.3,24,260/- of gratuity, as deducted, to the petitioner within a period of four months from the date of receipt of certified copy of this order along with interest @ 6% per annum.

14. So far as grievance of the petitioner for restoring his salary which has been re-fixed from 01.01.1996 to 30.04.2019 is concerned, liberty is granted to the petitioner to raise his grievance at appropriate level in accordance with law.

18.01.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No