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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20311-2019
Date of decision: 04.09.2024

GULSHAN KUMAR @ GULSHAN LAL

...Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ashwani Talwar, Advocate for the petitioner.

Mr. Ankit Midha, Advocate for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

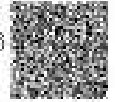
1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned orders dated 08.02.2018 (Annexure P-7), the calculations made in terms thereof vide tabulation (Annexure P-8), further reduction of pay vide re-fixation (Annexure P-10), the notice/orders dated 10.01.2019 (Annexure P-11) as well as dated 08.02.2019 (Annexure P-14) and consequential recoveries made from the pay and leave encashment of the petitioner totaling Rs.2,90,365/- as well as the reduction in the last drawn basic pay from Rs.39,600/- to Rs.38,400/- per month and fixation of pension and other retiral benefits at the reduced basic pay of Rs.38,400/- rather than Rs.39,600/- with a further direction to the respondents to compute the pension and other retiral benefits of the petitioner as per above and also pay the arrears



to the petitioner along with interest @ 18% per annum from the date of its accrual till the date of its actual disbursement.

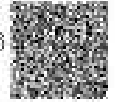
2. Learned counsel for the petitioner submitted that it is a case where the petitioner is 100% blind and he retired as a Lower Division Clerk (LDC) from the respondent-Nigam on 28.02.2019. He further submitted that while the petitioner was in service, he was granted 1st ACP with effect from 01.10.1999 and the benefit with regard to the same was granted to him from 01.04.2004 but in the year 2018, the respondent-Nigam detected its mistake to the extent that the petitioner ought to have been granted the benefit of 1st ACP with effect from 01.10.1999 but actually he was granted the benefit with effect from 01.01.1996 and in this way, the respondent-Nigam issued a notice to the petitioner vide Annexure P-14 on 08.02.2019 i.e. about 20 days prior to the date of his retirement asking him to deposit the excess pay which was given to him from 01.04.2004. He further submitted that the total amount which was sought to be recovered from the petitioner with regard to the aforesaid fixation of pay as a result of mistake committed by the respondent-Nigam was Rs.2,90,365/- and the aforesaid notice was issued to the petitioner about 20 days before his retirement and the respondent-Nigam recovered an amount of Rs.19,848/- from the salary of the petitioner when he was in service but thereafter, the petitioner retired and after his retirement, the remaining amount of Rs. 2,70,517/- was recovered from his retiral benefits.

3. Learned counsel for the petitioner further submitted that the petitioner is a 100% blind man who retired as a Lower Division Clerk (LDC) from the respondent-Nigam, which falls in the Group-'C' category and it is a case where the respondent-Nigam has admittedly committed the mistake on its



own by granting 1st ACP to the petitioner with effect from 01.01.1996 instead of 01.10.1999 and in pursuance thereof, the respondent-Nigam continued to pay him the benefit of aforesaid ACP, which now the respondent-Nigam states was an extra payment given to the petitioner inadvertently. He further submitted that so far as the aforesaid recovery of Rs.19,848/-, which was made during the service of the petitioner from his salary is concerned, he does not have any grievance with regard to the same but his grievance in the present writ petition is that once he retired from service, then any benefit which has been granted to the petitioner in the absence of any fraud or misrepresentation by him, the same could not have been effected from the retiral benefits of the petitioner because he retired as a Group-'C' category employee and he is fully covered by the judgment passed by Hon'ble Supreme Court in *State of Punjab and others versus Rafiq Masih (White Washer) and others, 2015 (4) SCC 334*, in this regard.

4. On the other hand, learned counsel for the respondent-Nigam submitted that although there was a mistake on the part of the respondent-Nigam at the time of fixation of pay of the petitioner after grant of 1st ACP, which he was entitled to from 01.10.1999 but he was inadvertently granted the aforesaid benefit with effect from 01.01.1996 and thereafter, from 01.04.2004, extra payment on account of grant of aforesaid ACP was given to the petitioner continuously and the said mistake was detected in the year 2018 by the Chief Accounts Officer of the respondent-Nigam, which is so reflected in para No.3 of the written statement filed on behalf XEN (OP) Division, UHBVN, Kurukshetra. He further submitted that since extra amount has been paid to the petitioner and the same has been detected prior to his retirement and a notice



has also been given to him regarding the same, the respondent-Nigam was within its rights to have recovered the entire excess amount from the petitioner, even from his retiral benefits.

5. Learned counsel for the respondent-Nigam also referred to Annexure R-1, which is attached along with the written statement filed on behalf XEN (OP) Division, UHBVN, Kurukshetra and submitted that the date of the aforesaid Annexure is 06.03.2009, which is an undertaking given by the petitioner that in case of any incorrect fixation of pay or any excess payment detected in the light of discrepancies, the same will be refunded by him to the respondent-Nigam. He referred to another document which is a part of Annexure R-1, which is also in the nature of undertaking but the same pertains to the petitioner when he was working as a Lower Division Clerk (LDC). He referred to both the aforesaid undertakings given by the petitioner and submitted that the case of the petitioner is not covered by the aforesaid judgment of Hon'ble Supreme Court in **Rafiq Masih's case (supra)** but rather the case of the respondents is covered by the subsequent judgment passed by Hon'ble Supreme Court passed in **High Court of Punjab & Haryana and others versus Jagdev Singh, 2016 (14) SCC 267** in their favour because the petitioner had himself given an undertaking in this regard that an extra amount, if at all, is given to him, then he shall be liable to refund the same to the respondent-Nigam and therefore, the present writ petition is liable to be dismissed.

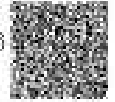
6. I have heard the learned counsels for the parties.

7. The petitioner is stated to be 100% blind and he retired as a Lower Division Clerk (LDC) from the respondent-Nigam on 28.02.2019. The



petitioner was issued a notice 20 days prior to his retirement vide Annexure P-14 dated 08.02.2019. The petitioner was granted benefit of 1st ACP in the year 2000, as per para No.3 of the written statement filed on behalf XEN (OP) Division, UHBVN, Kurukshetra and from 01.04.2004, the benefits started releasing towards the petitioner. The stand of the respondent-Nigam is that a mistake was committed by the respondent-Nigam in granting the benefit of 1st ACP to the petitioner with effect from 01.01.1996 instead of giving the said benefit to him with effect from 01.10.1999 and this mistake was detected in the year 2018 by the Chief Accounts Officer of the respondent-Nigam and therefore, the recovery was effected from the retiral benefits of the petitioner. An argument has been raised by the learned counsel for the respondent-Nigam that in view of the aforesaid undertakings given by the petitioner vide Annexure R-1, which are two undertakings, the petitioner is not entitled to refund of any recovery made from him.

8. It is undisputed that at the time of retirement of the petitioner, there was neither any enquiry nor any charge-sheet etc. pending against him and only notice was issued to the petitioner for the purpose of recovery of the aforesaid amount and in pursuance thereof, an amount of Rs.19,848/- was recovered from the salary of the petitioner when he was in service but in the meantime, the petitioner retired on 28.02.2019 and the learned counsel for the petitioner stated during the course of arguments that he does not dispute the recovery of aforesaid Rs.19,848/- which was made from the salary of the petitioner before his retirement but he disputes only the rest of the amount of Rs.2,70,517/-, which has been recovered from the retiral benefits of the petitioner after his retirement by relying upon the judgment of Hon'ble Supreme Court in



Rafiq Masih's case (supra). 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).

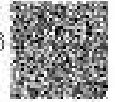
(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(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.

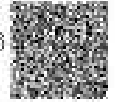
(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

9. Admittedly, the petitioner was a category 'C' employee and after his retirement, recovery has been effected from him. The only ground which has



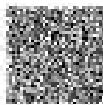
been taken by the respondent-Nigam is that the aforesaid judgment of Hon'ble Supreme Court in Jagdev Singh's case (supra) will apply to the petitioner because he has furnished an undertaking which has been attached along with the written statement filed on behalf XEN (OP) Division, UHBVN, Kurukshetra as Annexure R-1. However, a perusal of the aforesaid undertaking Annexure R-1 would show that the same is dated 06.03.2009, whereas the benefits of 1st ACP were released to the petitioner in the year 2000, as per para No.3 of the written statement filed on behalf XEN (OP) Division, UHBVN, Kurukshetra and as per both the learned counsels for the parties, the recovery was made with effect from 01.04.2004 and regarding which a chart has also been annexed along with Annexure P-14, which shows that the period from where the recovery started effecting was 01.04.2004 till 31.12.2018, which shows very clearly that the payment as a consequence of the grant of aforesaid ACP was given to the petitioner starting from 01.04.2004, whereas the undertaking Annexure R-1 which has been attached alongwith the written statement filed on behalf XEN (OP) Division, UHBVN, Kurukshetra as the first document is dated 06.03.2009.

10. A specific query was raised to the learned counsel for the respondent-Nigam as to how the aforesaid undertaking, which is purported to have been made after about 5 years i.e. in the year 2009 would correlate with the fixation of pay, which is the subject matter of the present case. It is also possible that there could be a different fixation of pay in the year 2009 regarding which undertaking might have been given by the petitioner but the learned counsel for the respondent-Nigam has not been able to show any document or to point out from the aforesaid written statement that how the



aforesaid undertaking would correlate with the grant of benefit of ACP given to the petitioner with effect from 01.04.2004 because the undertaking is of a much later date because it is dated 06.03.2009. In second part of the aforesaid Annexure R-1, another undertaking was referred to by the learned counsel for the respondent-Nigam but a perusal of the aforesaid would show that the aforesaid undertaking was given by the petitioner in the capacity of a Lower Division Clerk (LDC) and both the learned counsels for the parties have also submitted that the petitioner was promoted as Lower Division Clerk (LDC) on 20.03.2015 and therefore, the aforesaid undertaking, if at all given, although undated, was given in the year 2015, which otherwise would not have any correlation with the benefit of 1st ACP granted to the petitioner in the year 2000, regarding which he was given the aforesaid benefit with effect from 01.04.2004. Therefore, it is very clear that the aforesaid two undertakings which have been attached as Annexure R-1 have got no correlation at all with the grant of aforesaid benefit given to the petitioner.

11. Hon'ble Supreme Court in *Jagdev Singh's case (supra)* was dealing with a particular situation, whereby before granting the benefit of pay-scale to the employees, an undertaking was taken from them with regard to the fact that in case there is some recovery which is to be made thereafter, then they 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 when the benefit was granted to the petitioner, there is no undertaking on the record nor it has been so attached with the written statement filed on behalf XEN (OP) Division, UHBVN, Kurukshetra nor shown by the learned counsel for the respondent-



Nigam that any such undertaking was given. The aforesaid undertaking Annexure R-1 has got no correlation with the benefit which was granted to the petitioner in the year 2000, regarding which the benefit started releasing towards the petitioner with effect from 01.04.2004. Therefore, this Court is of the considered view that the aforesaid judgment of Hon'ble Supreme Court in Jagdev Singh's case (supra) is distinguishable on facts from the present case and it is not applicable to the facts and circumstances of the present case and rather on the other hand, the law laid down by Hon'ble Supreme Court in Rafiq Masih's case (supra) will be directly applicable in the present case, especially in view of the fact that the petitioner retired as a Group-'C' category employee.

12. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The respondent-Nigam is directed to refund the amount of Rs.2,70,517/- to the petitioner, which has been recovered from his retiral benefits, alongwith interest @ 6% per annum (simple), which shall be paid him from the date of his retirement till the date of its actual disbursement. The respondent-Nigam is directed to calculate the aforesaid amount and pay the same to the petitioner, within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

04.09.2024
Chetan Thakur

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No