



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

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CWP-18988-2018

Date of decision : 30.07.2024

Kesar Singh

.....Petitioner

Versus

Punjab State Power Corporation Ltd 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. Monica Chhibber Sharma, Advocate with
Ms. Priyanka Goyal, Advocate and
Mr. Adeep Sharma, Advocate for the respondents.

NAMIT KUMAR, J. (Oral)

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India, seeking a writ of certiorari, quashing the recovery of amount of Rs.1,22,959/- which has been effected from the DCRG of the petitioner as is portrayed from his DCRG order dated 18.05.2018 (Annexure P-1).

2. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner has retired from the respondent-Corporation on attaining the age of superannuation on 30.09.2015 as Junior Engineer. However, while releasing the payment of his DCRG vide order dated 18.05.2018 (Annexure P-1), recovery of Rs.1,22,959/- has been made from the same on account of some wrongly released benefits in the year 1996. Aggrieved against the said recovery, the present petition has been filed.

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3. Learned counsel for the petitioner submits that the petitioner has already retired from service on attaining the age of superannuation on 30.09.2015 and after his retirement, an amount of Rs.1,22,959/-, being alleged excess payment made to him in the year 1996, has been recovered from his DCRG, vide order dated 18.05.2018. He submits that no specific order for the said recovery has been passed and the recovery has been effected from the DCRG of the petitioner, which is 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*.

4. On the other hand, learned counsel for the respondents, while referring to the averments made in the reply, submits that there is no illegality or infirmity in the impugned recovery effected, as the petitioner had wrongly been given the benefits of new revised scale of 4th Pay Commission from 01.01.1996 instead of 03.03.1996 and accordingly recovery of Rs.1,22,959/- has been effected from the DCRG of the petitioner. He further submits that the petitioner had also given undertaking dated 21.10.2016 (Annexure R/2) stating therein that the amount of Rs.1,22,959/- may be recovered from his pensionary benefits.

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

6. The stand taken by the respondents-Corporation is that when the petitioner was about to retire, his service book had been sent to Audit Department and during inspection it was found that the

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petitioner had wrongly been given the benefit of new revised scale of 4th Pay Commission from 01.01.1996 instead of 03.03.1996. Vide letter dated 20.10.2016, the petitioner had been informed to pay the recovery amount of Rs.1,22,959/- with the Corporation so that his pensionary case may be put up before the Accountant General. In reply to the said letter, the petitioner filed representation dated 21.10.2016 (Annexure R/2) before the respondents and requested that at this time he is not in a position to pay the recovery amount of Rs.1,22,959/- and the said amount may be adjusted from his pensionary benefits. Accordingly recovery of Rs.1,22,959/- has been effected from the DCRG of the petitioner.

7. The argument raised by learned counsel for the respondents is not sustainable as even if an excess amount on the basis of wrong fixation of pay was paid to the petitioner in the year 1996, the same cannot be recovered from him after his retirement after a lapse of 22 years. The action of the respondent is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (Supra)***. The relevant portion of the aforesaid judgment is reproduced as under:-

“12. 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.”

8. The facts and circumstances of the present case suggests that it is not the case of the respondents-Corporation that it was due to some fraud or misrepresentation of the petitioner, who was working against Class III post, that he was granted excess payment but it was granted by the respondents-Corporation on their own.

9. Moreover, a perusal of the consent (Annexure R-/2) would show that the same is dated 21.10.2016, whereas the recovery, for the excess salary paid, is being made for the year 1996, therefore, the said consent has no concern with the amount recovered from the petitioner.



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Further the said undertaking is given by the petitioner for releasing his retiral dues expeditiously.

10. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by Clauses (i), (ii) and (iii) of para 12 of the judgment of Hon’ble Supreme Court passed in *Rafiq Masih (White Washer) and others case (Supra)*.

11. Consequently, the present petition is allowed and the impugned recovery of Rs.1,22,959/- effected from the DCRG of the petitioner is set aside. The respondents-Corporation is directed to refund the amount, deducted from DCRG, to the petitioner, within a period of 02 months from the date of receipt of certified copy of this order, along with interest @ 6% per annum from the date the same was effected from the petitioner till its actual payment.

30.07.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

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