2024:PHHC:019098

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20905 of 2021 (O&M)
Date of decision: 09.02.2024

Paramjit Kaur

....Petitioner

Versus

Punjab State Power Corporation Limited and Others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Gursimran Singh Bhatia, Advocate for the petitioner.

Mr. Gaurav Rana, Advocate for the respondents.

NAMIT KUMAR J.

1. Prayer in this writ petition filed by the petitioner under Article 226 of the Constitution of India, is for issuance of a writ in the nature of ceritiorari, for quashing the speaking order No.360 dated 04.09.2020 (Annexure P-5), vide which recovery of Rs.7,55,548/- has been effected from the retiral benefits of the petitioner. Further a writ of mandamus has been sought for directing the respondents to refund the total amount recovered in pursuance to the order dated 04.09.2020 (Annexure P-5), from the retiral benefits of the petitioner, along with interest @ 18% per annum.

2. The brief facts of the case, as have been pleaded in the petition, are that the petitioner was appointed on the post of Lower Division Clerk (Class III) in the Punjab State Electricity Board, now known as 'Punjab State Power Corporation Limited', in the pay-scale of

110-130/7-200/10-250 with pay of Rs.110/- per month. The petitioner was given appointment on compassionate grounds on 22.08.1979, on account of death of her father Sh. Partap Singh, Meter Reader, while on duty. The petitioner was appointed in Ferozepur Circle, Abohar Division and as per the order passed by the Secretary, Punjab State Electricity Board, Patiala, the age relaxation for appointment was granted to the petitioner besides two other specific conditions that the petitioner should qualify the Punjabi Typing Test at the speed of 30 words per minute within six months and she will get seniority in the rank of Lower Division Clerk, from the date she attains the age of 17 years. After rendering the services for 39 years and 02 months, the petitioner took voluntary retirement on 31.10.2018, from the post of Divisional Superintendent and she was relieved from the services as per order No.826 dated 29.10.2018 passed by respondent No.4. After her retirement, retiral benefits were not released to her on one account or the other reason and, therefore, she approached this Court by way of filing a petition i.e. CWP No.1964 of 2019 and the same was disposed of vide order dated 22.07.2019, with a direction to the respondents to decide the representation of the petitioner, by passing a speaking order within a period of 03 months. Inspite of passing of above order, the respondents failed to pass any speaking order and consequently, the petitioner had file contempt petition i.e. COCP No.799 of 2020, in which the respondent had filed reply along with the impugned speaking order dated 04.09.2020 and thereafter, the said contempt petition was disposed of vide order dated 28.09.2020. Hence, the petitioner has challenged the same in the present writ petition.

3. On issuance of notice of motion, written statement on behalf of the respondents/Corporation has been filed. Para 6, 7 and 8 of the written statement, reads as under:-

> *"6. That further the petitioner is not entitled to any annual increment before the age of 18 years i.e. the age as prescribed in the regulations for entering into service. The relevant part of PSEB Main Service Regulations 1972 Vol. I Part I is as under;*
>
> > *"**4.7.** An increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld from a Board employee by a competent authority (See Sr. No.10 Chapter XV) if his conduct has been not good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding, authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.*
> >
> > > ***Note:-** In the case of an officer/official who does not fulfill the basic condition laid down in the respective Service Regulations /Instructions regarding the minimum number of years of service, in the lower rank and who is promoted to a higher post by invoking an alternative provision in the relevant regulations/instructions, specifying the extent of relaxation of the basic condition, referred to above, the initial pay in his case would be the minimum of the post to which he is promoted/appointed till he fulfils the condition of completing the basic minimum period of service prescribed and the first annual increment will be granted after one year of the date of the completion of the minimum length of qualifying service/experience, necessary for appointment to the service, cadre or post. In other words for the purpose of 1st increment his appointment shall be deemed to have started on the date on which he completes the minimum qualifying service/experience, as is necessary for appointment to the service,*

> *cadre or the post concerned. This restriction will, however, not apply in cases where the officer /official was drawing pay more than the minimum of the higher post. In such cases pay more than the minimum of the higher post. In such cases pay shall be fixed in accordance with the provisions of Regulations 4.3 of these Regulations. The first annual increment in such a case also will, however, be granted after one year of the date of completion of the minimum length of qualifying service/experience."*

> *7. That further Regulation 7 of PSEB Ministerial Services Third Category Regulation 1985 clearly prescribes that the age for entering in service is 18 years.*

> *8. That the conjoint reading of Regulation 7 of PSEB Ministerial Services Third Category Regulation 1985 and regulation 4.7 of PSEB Main Service Regulations 1972 Vol. I Part I clearly provides that till the time an employee does not attains the minimum age as is required for appointment, till such time the benefits such as annual increment or time bound scale etc. are not admissible to such employee, in the present case as well admittedly, petitioner was appointed in service at the age of 15 years therefore, the recovery so ordered is justified and valid as per the above submissions."*

4. Learned counsel for the petitioner submits that in the absence of any valid reason, the recovery has been effected upon the petitioner after her retirement despite the fact that at earlier points of time, similar objections were raised by the department on two occasions, and the same were settled during the service of the petitioner and now after her retirement, recovery has been made which is liable to be set-aside. He further submits that the recovery has been effected from the petitioner without issuance of any show cause notice or granting

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 Pujjab vs Rafiq Masih (White Washer) and others",*** **2015(1) SCT 195**.

6. On the other hand, learned counsel for the respondents while referring to the averments made in the written statement, submits that after finalizing the case of the petitioner, pension with arrears of Rs.7,55,548/- (after deducting TDS) was credited into the account of petitioner on 02.09.2020 and further a payment of Rs.2,10,468/- on account of Death-cum-Retirement Gratuity was credited into his account (after deducting the recovery of Rs.7,89,532/-) and thereafter, another payment of Rs.4,87,431/- was credited into his account on 02.09.2020. A payment of Rs.17,38,425/- on account of GPF on 20.09.2019 and another payment of Rs.6,92,110/- on account of leave encashment on 01.09.2020 was credited into the account of the petitioner (after deducting TDS) and thereafter, the recovery of Rs.7,89,532/- was ordered by AO/EAD, PSPCL, Patiala. He further submits that the petitioner was appointed on compassionate ground merely at the age of 15 years on the post of Lower Division Clerk. The annual increments were payable to the petitioner only after attaining the age of 18 years and she will be entitled to claim seniority only after when she attain the age of 17 years and thereafter inadvertently, the petitioner was granted annual increment by treating her service w.e.f. 1979, which should have been given to her w.e.f. 1982. He further submits that since the petitioner already gave her undertaking in writing

to recover any excess payment given to her, therefore, the recovery has been effected from her and the same is as per rules.

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

8. It is the case of the petitioner that she had vountarily retired as Divisional Superintendent on 31.10.2018. After her retirement, an amount of Rs.7,55,548/- has been recovered from the retiral benefits of the petitioner. The plea taken by the respondents is that inadvertently, the petitioner was granted annual increment by treating her service with effect from 16.08.1979, which should have been given to her w.e.f. 1982, on attaining the age of 18 years. As per written statement filed by the respondents/Corporation, the mistake was detected by the Audit Department and that is why recovery has been effected from the petitioner. Another argument which has been advanced by learned counsel for the respondents/Corporation is that an undertaking was given by the petitioner on 19.11.2009 at the time of accepting the increment (Annexure R-5) and another undertaking dated NIL at the time of retirement that in case of incorrect fixation of pay, the excess payment will be refunded by her to the Board and therefore, judgment of ***Rafiq Masih (White Washer) and others case (Supra)*** will not apply.

9. Both the arguments raised by learned counsel for the respondents/Corporation are not sustainable. Firstly, even if an excess amount on the basis of wrong fixation of pay while granting benefit w.e.f. 1979 was paid to the petitioner, the same cannot be recovered from the petitioner after her retirement. The action of the

respondents/Corporation 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:-

> *"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 suggests that it is not the case of the respondents/Corporation that it was due to some fraud or misrepresentation of the petitioner that the said fixation of pay was made during her service but it was made by the respondents/Corporation on their own and recovery has been effected after the retirement of the petitioner without issuing any show cause notice to her.

11. So far as the second argument raised by the learned counsel for the respondents/Corporation that the petitioner had furnished an undertaking dated 19.11.2009 vide Annexure R-1 and an undertaking dated NIL are concerned, the same are also not sustainable in view of the fact that one of the undertaking was given by the petitioner which is a stereotyped undertaking and is also generalized in nature. The undertaking furnished by the petitioner, at the time of her retirement, 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 respondents/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 was voluntarily retired in the year 2018 whereas the benefit has been granted in the year 1979 and therefore, the facts and circumstances of the present case are totally distinguishable from the aforesaid judgment in ***Jagdev Singh's case (supra)***.

12. 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.

13. 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 she was granted an opportunity of personal hearing.

14. Consequently, the present petition is allowed and the impugned order dated 04.09.2020 (Annexure P-5) whereby recovery has been effected from the petitioner is quashed. The respondents are directed to refund the amount of Rs.7,55,548/-, so deducted, to the petitioner, within a period of 03 months from the date of receipt of certified copy of this order, along with interest @ 6% per annum.

(NAMIT KUMAR)
JUDGE

09.02.2024
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No