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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2567-2017(O&M)
Date of decision: 25.04.2024

Jagdish Chander Khanna

...Petitioner

VERSUS

UHBVNL and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Manoj Makkar, Advocate, for the petitioner.

Mr. Vishal Garg, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing order dated 04.11.2016 (Annexure P-3).

2. Learned counsel for the petitioner has submitted that the petitioner was not granted the stepping up of pay for grant of first and second ACP and he filed a writ petition before this Court in CWP No.24019 of 2011 which was allowed by a Co-ordinate Bench of this Court vide Annexure P-1 on 16.12.2014 by which it was directed that the petitioner was entitled for benefit in this regard. Thereafter, since the amount was not paid to the petitioner, he filed a contempt petition before this Court and in the contempt petition the counsel for the respondent had stated that some amount has been paid to the

petitioner and rather an excess payment has already been made to the petitioner and therefore, the contempt petition was disposed of by giving a liberty to the respondent to recover the excess amount after giving the petitioner an opportunity to respond through recovery notice and liberty was also granted to the petitioner to file an appropriate application before this Court in the contempt petition in case the assertion made by the counsel for the respondent is found to be incorrect. Learned counsel submitted that thereafter a notice was issued to the petitioner vide Annexure P-3 to which he replied vide Annexure P-4. He submitted that once an amount has been paid to the petitioner even if it is an excess amount due to some inadvertent mistake, then the respondents are not entitled to recover the said amount in view of the judgment of the Hon'ble Supreme Court in *State of Punjab and others Versus Rafiq Masih and others, 2015(4) SCC 334*.

3. On the other hand, learned counsel appearing on behalf of the respondents submitted that when the petition filed by the petitioner earlier was allowed by this Court vide Annexure P-1 and the same has already been complied with and the amount has already been paid to the petitioner but inadvertently some excess amount was paid to the petitioner. He submitted that the total amount alongwith interest which was payable to the petitioner was Rs. 2, 51,069/- but inadvertently an amount of Rs. 3,97,118/- was paid to him and therefore, for the excess amount of Rs. 1,46,049/- recovery was required to be effected and rather when a Co-ordinate Bench of this Court had passed an order in the contempt petition, rather liberty was given to the respondents to recover the excess amount after giving an opportunity of hearing and rather liberty was granted to the petitioner to file an appropriate application in case

the assertion made by the respondent is found to be incorrect. He submitted that no application has been filed by the petitioner in the aforesaid contempt petition thereafter and now once a liberty has been granted by a Co-ordinate Bench of this Court for recovery of the excess amount after giving an opportunity of hearing and regarding which a notice was issued by the respondents, then the judgment of the Hon'ble Supreme Court in ***State of Punjab and others Versus Rafiq Masih and others(supra)*** will not apply.

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

5. The only dispute in the present case is as to whether the respondents could have recovered an excess amount of Rs. 1,46,049/- from the petitioner or not. The petitioner earlier had filed a petition for grant of first and second ACP which was allowed and a direction was issued to the respondents to pay the petitioner the amount alongwith interest. The total amount which was required to be paid to the petitioner was Rs. 2, 51,069/- but inadvertently an amount of Rs. 3,97,118/- was paid to the petitioner and therefore, there was an excess payment of Rs. 1,46,049/-. When the petitioner filed a contempt petition before this Court, liberty was granted to recover the excess amount.

The aforesaid order Annexure P-2 is reproduced as under:-

“Counsel for the respondent states that the amount due to the petitioner, in compliance with the order passed by this Court and having accepted the claim of the petitioner, has been released. He further states that inadvertently excess payment has been made as it has been granted to the petitioner from the date it became due rather the arrears have been restricted to 38 months prior to the date of the filing of the writ petition.

If that be so, the respondent is at liberty to recover the excess amount after giving the petitioner an opportunity to respond through recovery notice. Liberty is also granted to the petitioner to file an appropriate application before this Court in the present contempt petition in case

the assertion, as made by the counsel for the respondent, is found to be incorrect. With these observations, the present contempt petition is disposed of as infructuous with liberty aforesaid.

Rule issued to the respondent stands discharged subject to above.

6. A perusal of the aforesaid order would show that this Court had rather granted liberty to the respondents to recover the excess amount after giving opportunity of hearing to the petitioner. Thereafter, vide Annexure P-3 a notice was issued to the petitioner to which he replied. It is not the case of the counsel for the petitioner that the aforesaid amount was not an excess amount but it is only the case of the counsel for the petitioner that the same could not have been recovered even if it was inadvertently deposited because of the judgment of the Hon'ble Supreme Court in ***State of Punjab and others Versus Rafiq Masih and others(supra)***. This Court is of the considered view that considering the aforesaid facts and circumstances, the case of the petitioner is not covered by the judgment of the Hon'ble Supreme Court in ***State of Punjab and others Versus Rafiq Masih and others(supra)***. Rather on the other hand, a liberty was granted to the respondent-Nigam by this Court itself vide Annexure P-2 to recover the excess amount after giving opportunity of hearing.

7. In view of the above, the present petition is not only devoid of merit but it is also misconceived. Consequently, the present petition is dismissed.

(JASGURPREET SINGH PURI)
JUDGE

25.04.2024
rakesh

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