

Date of decision : 29.02.2024

.....Petitioners

V/S

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Mr. Rajesh Tushar, Advocate for
Ms. Geeta Sharma, Advocate
for respondents No.2 to 5.

NAMIT KUMAR, J. (ORAL)

2. The brief facts of the case, as have been pleaded in the present petition, are that the petitioners are working as Assistant Linemen and Linemen in the Punjab State Transmission Corporation Limited (PSTCL). Their headquarter has been fixed as 220 KV, substation Sarna, District Pathankot for the maintenance of 220 KV and

132 KV lines around the clock. It is the case of the petitioners that as per the policy of the Corporation, the employees who are working in rural/border areas and whose headquarter is fixed in the rural/border areas shall be entitled to rural/border area allowance and when the headquarter of the petitioners was fixed at 220 KV, substation Sarna, District Pathankot, which is a rural area and quite near to the India Pakistan border and the petitioners have been deputed for maintenance of 220 KV and 132 KV lines in the said area then apart from the house rent allowance, they were paid the rural/border area allowance from March 2006 to June 2010. Thereafter, in year 2017 recovery order has been passed by the respondent-Corporation on the ground that headquarter of the petitioners was wrongly changed from Batala to Sarna without obtaining requisite permission from the authorities and therefore, the amount paid towards rural/border area allowance is to be recovered from them. The proposed amount of recovery to be effected from the petitioners is as under :-

Sr. No.	Name	Date of joining the Department	Amount to be recovered (in rupees)
1.	Ashwani Kumar, ALM	01.01.2001	19,232/-
2.	Surjit Kumar, ALM	12.02.1996	62,194/-
3.	Mohinder Singh, ALM now LM	27.05.1997	33,794/-
4.	Sudesh Kumar, ALM now LM	01.04.1988	23,502/-
5.	Joginder Kumar, ALM	23.03.1990	15,162/-
6.	Unish Masih, ALM now LM	10.09.1997	24,520/-
7.	Joginder Singh, ALM	17.01.2000	21,176/-
8.	Sulakhan Singh, ALM now LM	07.12.1989	62,117

3. While issuing notice of motion on 02.12.2017, further recovery from the petitioners has been stayed. Written statement on behalf of respondents No.2 to 5 has been filed, wherein it has been stated as under :-

“4. That in reply to para 4, it is submitted that as per finance circular 02/99 dated 14.01.1999 issued by Secretary, PSEB, the house rent allowance will be paid according to the Posting Station of the employee where his sanctioned post exist. The petitioners were posted at AOTL S/D Batala against the sanctioned post so the house rent allowance were to be paid according to Batala area i.e 7.5% but petitioners were paid rural and border area allowance of Sarna and Hajipur Head Quarter where they were deputed to carry on the official duty of maintenance of lines and Towers. The payment of allowance paid as per rural and border area rates was objected by the Audit party in para No. 5 of Audit report for the year 2007-2009. As per the objection of the Audit report the office was directed to recover the rural and Border Area allowances paid to the petitioners instead of their sanctioned post at Batala.

5. That the contents of para 5 are matter of record. However, after the objection of the Audit party in their report for the year 2007-09 this office was directed to rectify and recover the rural and Border Area allowance paid to the petitioners instead of sanctioned post at Batala.

6. That in reply to para 6, it is submitted that as per circular no.26/2003 dated 05.08.2003 issued by Secretary PSEB wherein it was clarified that there can be no transfer/posting of official at place other than that of sanctioned post. In view of the circular no. 26/2003 the

rural and border area allowance given to these employees had become recoverable as per the Audit party report given in para 5 for the year 2007-09

xx xx xx xx xx

9. *That in reply to para 9, it is submitted that the permission applied for Ex. Post Facto was not granted. Therefore, the excess payment of rural and border area allowance paid to the petitioners become recoverable by the answering respondent. The petitioners have also mentioned the circular of 2003 where in there is restriction of the change of station to the other and fixing of Head Quarter of the employees without obtaining requisite permission from the Competent Authority.”*

4. In the nutshell, the stand taken in the written statement is that the petitioners are entitled for house rent allowance @ 7.5% but the petitioners were paid rural/border area allowance of Sarna and Hajipur headquarter where they were deputed to carry out their official duties of maintenance of lines and towers and the payment of allowance paid as per rural/border area was objected by the Audit party for the year 2007-2009 and the permission applied for ex-post facto sanction was not granted, therefore, the excess payment of rural/border area allowance have become recoverable.

5. Learned counsel for the petitioner submits that the rural/border area allowance has been granted to the petitioners on their posting at Sarna and there is no misrepresentation/fraud on the part of the petitioners. He further submits that rural/border allowance was paid to the petitioners for the period from March, 2006 to June, 2010 and

recovery notice has been issued after a period of ten years. It is not

disputed that the petitioners have not worked on the rural/border area. But since the necessary permission for change of station/headquarter was not taken from the authorities by the department, the petitioners have been made scapegoat and recovery notice has been issued against them. He further submits that the case of the petitioners is squarely covered by the judgment of Hon'ble Supreme Court passed in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195.***

6. Per contra, learned counsel appearing for the respondents submits that since the petitioners were not entitled to the rural/border area allowance, therefore, the same has been objected to by the Audit party and consequently, recovery has been ordered to be effected from the petitioners and since the amount was wrongly paid to the petitioners, therefore, the same is liable to be recovered.

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

8. Admittedly, the benefit of rural/border area allowance from March 2006 to June 2010 has been extended by the respondent-corporation on their own and there is no misrepresentation/fraud on the part of the petitioners and rather it is the case of the respondents that ex-post facto sanction was sought but the same was not granted, therefore, the amount has been ordered to be recovered from the petitioner.

9. The Hon'ble Supreme Court in ***Rafiq Masih's case (supra)*** has held 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, summaries 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.”*

10. Since the petitioners are working against Group ‘C’ post and the recovery has been ordered in the year 2017 for the amount paid from March 2006 to June 2010, therefore, the case of the petitioners would be squarely covered by the clause (i) and (iii) of para 12 of the

judgment in the case of *Rafiq Masih’s case (supra)* as has been reproduced above. Moreso, the petitioners have actually worked in the rural/border area during the relevant period of time. The mistake was committed on the part of the respondents, who could not seek sanction from the authorities timely and due to their lapse, the petitioners cannot be made victim of their wrong.

11. Consequently, the present writ petition is allowed and the impugned order of recovery (Annexure P-1) is set aside. The recovered amount from the petitioners, if any, shall be refunded to them by the respondents within a period of two months from the date of receipt of certified copy of this order.

29.02.2024
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No