



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

CWP-7168-2016

Reserved on : 04.09.2024

Date of decision : 10.09.2024

Gurdev Ram Bali

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. G.P. Vashisht, Advocate for the petitioner.

Mr. Surya Kumar, A.A.G., Punjab.

Ms. Anamika Sheoran, Advocate for

Mr. Vikas Singh, Advocate for respondents No.3 & 4.

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 in the nature of certiorari, quashing the order dated 27/28.07.2015 (Annexure P-8), whereby the petitioner has been dismissed from service and order dated 09/10.03.2016 (Annexure P-9), whereby the salary of the petitioner has been re-fixed w.e.f. 15.04.2011 to June, 2015 and further seeking a writ in the nature of mandamus, directing the respondents to pay the EPF amounts to the petitioner.

2. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner earlier retired as Superintendent from the office of Government of Punjab, on attaining the age of superannuation, on 31.08.2010. Thereafter, on 15.04.2011, the petitioner joined the office of respondent No.3 as Administrative Officer on a fixed salary of

Rs.10,000/-. However, in view of the resolution No.24.18 dated 05.04.2011, passed by the Board of Management of the Punjab Land Record Society, the salary of the petitioner was enhanced to Rs.15,000/-. The salary of the employees of Punjab Land Record Society was enhanced by 35% w.e.f. 01.04.2011 after taking the decision with the approval of the Revenue Minister, Punjab and the Chief Secretary, Punjab. Respondent No.3 accordingly issued a letter dated 20.05.2011 to all the Deputy Commissioners in the State of Punjab regarding the enhancement of salary and other demands of Punjab Land Record Society. Due to manipulations in order to oust the petitioner, the petitioner was suspended and during his suspension, his work was given to Sh. A.K. Mittu, Manager, HRD-cum-Training Officer and warning was also given to the petitioner vide letter dated 17.06.2015. Thereafter, the enquiry was conducted against the petitioner and he was dismissed from service vide order dated 27/28.07.2025. After his dismissal from service, the respondents, vide order dated 09/10.03.2016, have re-fixed the salary of the petitioner w.e.f. 15.04.2011 to June, 2015 and vide letter dated 18.03.2016, the petitioner was directed to deposit the excess amount paid to him amounting to Rs.3,92,042/- in the office of Punjab Land Revenue Society. The respondents are also not releasing the EPF of the petitioner inspite of repeated requests. Hence, the present petition.

3. While issuing notice of motion, on 20.05.2016, recovery from the petitioner was stayed till further orders.

4. Pursuant to notice of motion, separate replies on behalf of respondents No.1 & 2 and 3 & 4 have been filed. In the reply filed on

behalf of respondents No.3 & 4, it has been stated as under :-

“xx xx xx xx xx

2. *That the factual position is that the petitioner was earlier an employee of State of Punjab and had retired from the service of the Punjab Government on 31.8.2010. The respondent Society had issued an advertisement for filling up the post of Administrative Officer vide advertisement No.84 dated 11.4.2011 (Annexure-R-1). A perusal of the advertisement would show that the remuneration for the post of Administrative Officer was Rs.10,000/- per month. The petitioner was selected and the letter of appointment was issued to the petitioner on 14.4.2011, copy of which is already on record as Annexure P-1. A perusal of Annexure P-1 would reveal that the remuneration package was Rs.10,000/-. In pursuance thereto the petitioner joined duty on 15.4.2011 at Jalandhar. While in service of the Society the petitioner served at Jalandhar. It was on 25.4.2011 that a representation (Annexure P-3) was given by the petitioner for increasing his salary in view of the agenda resolution No.24.18 passed by the Board of Management of the Punjab Land Record Society in its meeting held on 5.4.2011. In fact two other employees i.e. Gurmail Ram, Financial Controller & Sanjay Arora, Accounts Officer, of the Society had also submitted representation for increase in their salary. Copies of their representations are annexed herewith as Annexure R-2 & R-3. Their representations were rejected by the competent authority on 16.5.2011 (Annexure R-4 & R-5) holding that they were not eligible to claim the salary as per aforesaid agenda/resolution no.24.18 as the same related to the post created at Chandigarh and was not in respect of the persons posted at Jalandhar. However, the petitioner continued to draw salary at the rate of Rs.15,000/- per month in spite of the*

fact that the said amount was meant for the newly created post at Chandigarh. Consequently, when this fact came to light, the order Annexure P-9 was passed. Therefore, it is submitted that the order Annexure P-9 is legal and valid.

xx xx xx xx xx”

5. Learned counsel for the petitioner submits that the petitioner was dismissed from service on 27/28.07.2015 and the impugned order dated 09/10.03.2016 has been passed after 09 months from his dismissal. He further submits that the impugned order dated 09/10.03.2016 was passed without issuing any show cause notice or granting any opportunity of personal hearing in unilateral manner, which is in violation of the principles of natural justice.

6. During the course of hearing learned counsel for the petitioner restricts his claim for quashing the impugned order dated 09/10.03.2016 (Annexure P-9) whereby salary of the petitioner has been re-fixed and recovery has been ordered to be effected from the petitioner.

7. Per contra, learned counsel for respondents No.3 & 4 and learned State counsel submit that the resolution No.24.18 dated 05.04.2011 passed by the Board of Management of the Punjab Land Record Society was related to the enhancement of salary for the post created at Chandigarh, whereas the petitioner served at Jalandhar and he was not eligible for the enhanced salary. However, inadvertently, the petitioner continued to draw enhanced salary of Rs.15,000/-. Therefore, there is no illegality or infirmity in the impugned order dated 09/10.03.2016 as the petitioner had wrongly been given excess salary w.e.f. 15.04.2011 to June 2015 and accordingly his salary has been re-fixed and recovery has been ordered to be effected from him.

8. I have heard learned counsel for the parties and perused the relevant documents with their able assistance.

9. Admittedly, the petitioner joined the office of respondent No.3 as Administrative Officer on 15.04.2011 on a fixed salary of Rs.10,000/-. However, in view of the resolution No.24.18 dated 05.04.2011 passed by the Board of Management of the Punjab Land Record Society, the salary of the petitioner was enhanced to Rs.15,000/-. The stand of the respondents is that inadvertently, the petitioner was given enhanced salary during his service as he was working at Jalandhar whereas the abovesaid resolution passed for enhancement of salary of the post created at Chandigarh.

10. Even if an excess amount on the basis of wrong fixation of pay was paid to the petitioner, the same cannot be recovered from him. The Hon'ble Supreme Court of India in ***Jagdish Prasad Singh Vs. State of Bihar and others : 2024 INSC 591***, while following the judgment in ***State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195***, whereby certain guidelines were issued as to under what circumstances the recoveries can be effected, has held that once the relationship between employer and employee have come to an end, no departmental action could have been initiated by the State against the employee after passing of eight years following his superannuation which was manifestly not preceded by any show cause notice and was thus, passed in gross violation of the principles of nature justice and further observed that any step of reduction in the pay scale and recovery from a government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences.

11. The facts and circumstances of the present case suggests that it is not the case of the respondents that it was due to some fraud or misrepresentation of the petitioner that he was granted excess payment but it was granted by the respondents on their own.

12. Moreover, the impugned order dated 09/10.03.2016 has been passed in violation of the principles of natural justice as neither any show cause notice was issued to the petitioner nor he was granted an opportunity of personal hearing.

13. In view of the above, the order dated 09/10.03.2016 (Annexure P-9), whereby the salary of the petitioner has been re-fixed w.e.f. 15.04.2011 to June, 2015 and recovery for an amount of Rs.3,92,042/- has been ordered to be effected form the petitioner is quashed and set aside.

14. Disposed of in the above terms.

15. So far as grievance of the petitioner for quashing the order dated 27/28.07.2015 (Annexure P-8), whereby the petitioner has been dismissed from service and directing the respondents to pay his EPF amounts are concerned, liberty is granted to the petitioner to raise his grievances at appropriate level in accordance with law.

10.09.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

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