



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

218

**CWP-28946-2017
Decided on : 20.05.2024**

Sukhpal Singh

.....Petitioner

Versus

The Punjab State Power Corporation Ltd. and others

..Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Pankaj Sharma, Advocate for the petitioner.

Mr. Shiv Kumar, Sharma, Advocate with
Mr. Pranshul Dhull, 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 for quashing the order dated 01.08.2017 (Annexure P-5) passed by respondent No.2, whereby an amount of Rs.1,06,114/- has been ordered to be recovered from the gratuity of the petitioner and further sought a writ of mandamus directing the respondents to release the amount, which has been recovered from the gratuity of the petitioner, along with interest @ 18% per annum from the date it is due.

2. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner was initially appointed as T-mate in the Electricity Wing of the Municipal Corporation, Amritsar on 19.06.1979. After 08 years of service, the petitioner got one proficiency step up on 19.06.1987. Thereafter, he was promoted as Assistant Lineman on 01.04.1994 and as Sub Station Attendant on 23.07.2002 and retired as



CWP-28946-2017

2

such on 31.08.2016, on attaining the age of superannuation. After his retirement the impugned order for recovery of Rs.1,06,114/- has been passed on 01.08.2017. Hence this petition.

3. On issuance of notice of motion, written statement has been filed by the respondents wherein, it has been averred as under :-

“xx xx xx xx xx

(2) That the para no.2 of the petition is replied in this way that on the directions of the Chief Accounts Officer, Patiala, the services book of the petitioner is scrutinized by the concerned PSPCL office and it was found that the amount of Rs. 1,06,114/- (Rupees One Lac Six Thousand One Hundred Fourteen) as excess amount was paid to the petitioner, so this amount was recovered from the gratuity of the petitioner, as such, the version of the petitioner is denied being wrong. So, the recovery of Rs. 1,06,114/- (Rupees One Lac Six Thousand One Hundred Fourteen) was made as per the rules and regulations of the department.

xx xx xx xx xx”

4. Learned counsel for the petitioner submits that the petitioner retired on 31.08.2016 and after his retirement an amount of Rs.1,06,114/-, being alleged excess payment made to the petitioner, has been recovered from his gratuity. He submits that the impugned recovery has been made on 01.08.2017, without passing any specific order and without issuance of any show cause notice or personal hearing in unilateral manner, 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 Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195.**

**CWP-28946-2017****3**

5. 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 order dated 01.08.2017 as the excess payment was made to the petitioner and the same is liable to be recovered from him.

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

7. Admittedly, the petitioner retired from service on 31.08.2016, on attaining the age of superannuation and after 01 year of his retirement the impugned recovery of Rs.1,06,114/- has been made on 01.08.2017 and the abovesaid recovery has been effected from the gratuity of the petitioner. In the reply filed by the respondents no reason has been assigned for effecting the abovesaid recovery except by stating that since the excess amount was paid to the petitioner, therefore, the recovery has been effected from him. No period in relation to which the excess amount was paid to the petitioner has been mentioned in the reply. 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 after his retirement. The action of the respondent-Corporation is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer)'s 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 respondent-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 respondent-Corporation on their own.

9. Moreover, the recovery has been ordered by the respondent-Corporation in violation of the principles of natural justice



CWP-28946-2017

5

as neither any show cause notice was issued to the petitioner nor he was granted an opportunity of personal hearing.

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) 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 is set aside. The respondent-Corporation is directed to refund the amount of Rs.1,06,114/-, deducted from the gratuity, 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.

20.05.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

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