219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-347-2017
Date of decision: 14.03.2024

BAKSHISH SINGH ...PETITIONER

VERSUS

PUNJAB STATE POWER CORPORATION LTD, PATIALA AND ORS. ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Peeush Gagneja, Advocate for the petitioner.

Mr. Vishal Gupta, Advocate for
Mr. Puneet Bhandari, Advocate for the respondents.

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NAMIT KUMAR ,J. (ORAL)

1. The challenge in the present petition is to the orders dated 22.01.2013 (Annexure P-3) and 30.04.2015 (Annexure P-6), whereby two special increments granted to the petitioner on assigning duties of the post of Cashier w.e.f. 05.03.1997, have been withdrawn and the necessary recovery has been made from the petitioner.

2. Learned counsel for the petitioner submits that the petitioner initially joined as Lower Division Clerk on 07.12.1984 and he was assigned the duties of the post of Cashier vide order dated 05.03.1997. For performing the duties on the post of Cashier, he was granted the benefit of two special increments. The said benefit has been withdrawn by the respondents vide orders dated 22.01.2013 (Annexure P-3) and 30.04.2015 (Annexure P-6) and the necessary recovery has been made from the salary of the petitioner. Thereafter, the petitioner retired from the service on attaining the age of superannuation on 31.01.2020. He further submits that the said benefit has been withdrawn from the petitioner in view of the Finance Circular No.40/2011 dated 09.08.2011 (Annexure P-2) and the

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relevant clauses from the said Circular read as under:-

> *"(i) The increment(s) being granted earlier, at the time of promotion of Cashier from Lower Division Clerk, has been decided to be granted in the New revised Scale in future.*
> *(ii) The 2 increments benefits, granted in new revised pay scale to the Lower Division Clerks, at the time of becoming Cashiers will be granted only in lieu of doing the work of Cashier, which will be liable to be withdrawn, at the time of his next promotion to the post of Upper Division Clerk or his becoming Lower Division Clerk again, and even his retirement etc. this benefit of increment will be liable to be withdrawn."*

3. Learned counsel for the petitioner submits that the Finance Circular No.40/2011 dated 09.08.2011 cannot be given effect retrospectively and therefore, order of withdrawal of the said two increments and recovery is totally illegal. He further submits that while passing the said orders, neither any show cause notice was issued to the petitioner nor an opportunity of personal hearing was granted and the said benefit has unilaterally been withdrawn from the petitioner.

4. On the other hand, learned counsel for the respondents submits that the petitioner was thereafter, promoted as Upper Division Clerk on 27.07.1998 and in terms of Finance Circular No.40/2011 dated 09.08.2011 (Annexure P-2), the petitioner is not entitled for the grant of said two increments, and therefore, those have rightly been withdrawn from the petitioner.

5. I have heard learned counsel for the parties.

6. Admittedly, the petitioner joined the service of the respondents-Corporation as Lower Division Clerk on 07.12.984 and was assigned the duties of the post of Cashier on 05.03.1997. For performing the said duties, he was

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given two special increments w.e.f. 05.03.1997 and the petitioner got the said benefit up to 22.01.2013, and in the integrum, the Finance Circular No. 40/2011 dated 09.08.2011 (Annexure P-2) was issued. While withdrawing the said benefit, neither any show cause notice has been issued nor an opportunity of personal hearing has been granted to the petitioner which is in violation of the principle of natural justice as no order, which has civil consequences can be passed without complying with the principle of natural justice. Even otherwise, the Finance Circular No.40/11 dated 09.08.2011, cannot be made effective retrospectively and consequently, the withdrawal of two special increments from the petitioner is held to be illegal. The petitioner has already retired from the service on attaining the age of superannuation on 21.01.2020. He placed reliance on the judgment of the Hon'ble Supreme Court passed in ***State of Punjab and others Versus Rafiq Masih,*** wherein it has been held 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.*

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> *(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."*

7. In view of the above, the present petition is allowed, the impugned orders dated 22.01.2013 (Annexure P-3) and 30.04.2015 (Annexure P-6) are set aside and the amount recovered from the petitioner in pursuance to the letter/orders dated 22.01.2013 (Annexure P-3) and 30.04.2015 (Annexure P-6) shall be refunded, to the petitioner with all consequential benefits, within a period of 03 months from the date of the receipt of certified copy of this order.

14.03.2024 **(NAMIT KUMAR)**
renubala **JUDGE**

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

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