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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17709-2023 (O&M)
Date of decision: 23.09.2024

Surinder Kumar

...Petitioner

VERSUS

Uttar Haryana Bijli Vitran Nigam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. S.K. Yadav, Advocate, for the petitioner.

Dr. Neha Awasthi, Advocate, for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondents to pay interest on the amount of Rs. 2,10,924/- which was deducted from the leave encashment of the petitioner.

2. Learned counsel appearing on behalf of the petitioner submitted that while the petitioner was in service and was working as Section Officer, he was granted some ACPs but thereafter the respondent-Nigam again reconsidered the issue and had withdrawn the ACPs but after the retirement of the petitioner on 30.11.2020, an amount of Rs, 2,10,924/- was deducted from his leave encashment. He submitted that once the petitioner retired and an amount, if at all was given to the petitioner erroneously while he was in service by granting ACPs, no amount could have been deducted from the pensionary



benefits of the petitioner after his retirement in view of the law laid down by Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334*. He further submitted that thereafter the respondents themselves rectified their mistake and refunded the aforesaid amount to the petitioner. He submitted that now the claim of the petitioner is to the extent of the interest that may be granted to the petitioner for the aforesaid amount which was retained by the respondent-Nigam in an illegal manner. In this regard, he referred to a Full Bench judgment of this Court in *A.S. Randhawa Versus State of Punjab and others, 1997(3) SCT 468* and a judgment of a Co-ordinate Bench of this Court in *J.S. Cheema Versus State of Haryana and others, 2014 (1) SCT 782*.

3. On the other hand, learned counsel appearing on behalf of the respondent-Nigam submitted that the petitioner himself was the Dealing Section Officer at the time when he was granted ACPs. She submitted that the ACPs benefits were wrongly granted to the petitioner and the same could have been recovered from him.

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

5. The only issue involved in the present case is with regard to grant of interest on the payment which was wrongly withheld from the leave encashment of the petitioner after his retirement. Admittedly, benefit was granted to the petitioner at the time when he was in service which was later on withdrawn but after his retirement, an amount of Rs. 2,10,924/- was recovered from the leave encashment of the petitioner. The law in this regard is no longer *res integra*. The concluding part of the judgment of Hon'ble Supreme Court in Rafiq Masih's case (*supra*) is reproduced 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-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.”

6. In the present case, the claim of the petitioner for the grant of interest is squarely covered by the aforesaid judgment of Hon'ble Supreme Court in ***Rafiq Masih's case (Supra)***. A Full Bench of this Court in ***A.S. Randhawa's case (Supra)*** has held that a separate petition for the grant of interest would be maintainable. Similarly a Co-ordinate Bench of this Court in ***J.S. Cheema's (Supra)*** has also held that when an amount of an employee /retiree is withheld by the State, then interest component upon the same has to be paid to the employee because the same was used by the employer. Apart

from the above, the respondents themselves after rectifying their mistake have refunded back the aforesaid amount to the petitioner.

7. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The respondent-Nigam is directed to calculate the interest @ 6% per annum (simple) on the aforesaid amount of Rs. 2,10,924/-from the date of the retirement of the petitioner plus two months till the date of actual disbursal of the aforesaid amount to the petitioner and pay the same to the petitioner, within a period of three months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid three months, then the petitioner shall be entitled for future interest @ 9% per annum (simple).

23.09.2024
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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