IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-6483-2017 (O&M)
Date of Decision: 24.10.2024

Gobind Ram (L.M. Retd.)

......Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Gurnoor Singh Sethi, Advocate as Legal Aid Counsel for the petitioner.

Mr. Vishal Singh Chauhan, Advocate for respondents.

None for respondent-Bank.

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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 *certiorari* for quashing the impugned order dated 11.08.2016 (Annexure P-3) vide which the pension of the petitioner was reduced from Rs.10358+DA (21973) per month to Rs.6905+DA (14204) per month and thereafter started effecting recovery of Rs.1,000/- per month without giving any intimation or opportunity of hearing given to the petitioner.

2. Learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner was working as a Lineman in the office of respondent-Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred as 'Nigam') and he retired on attaining the age of superannuation on

30.09.2004. The petitioner was granted pension by the respondent-Nigam which was being disbursed by the respondent-State Bank of India. However, on 11.08.2016 vide Annexure P-3, the respondent-Nigam informed the respondent-Bank that excess pension was being paid to the petitioner. Upon checking the petitioner's pension papers in the month of February 2016, it had come to the notice of the respondent-Nigam that the petitioner had been receiving excess payment of pension and Dearness Allowance every month. It was further mentioned in the aforesaid letter (Annexure P-3) that the respondent-Nigam issued the subject cited PPO for releasing the pension specified an amount of Rs.4583+DA w.e.f. 01.10.2004 and the same was sent to the bank in this regard. In the aforesaid letter it was also stated that the respondent-Nigam had intimated the respondent-Bank regarding excess payment on 14.01.2016 but the respondent-bank was releasing the excess monthly pension @ Rs.10358+DA and, therefore, requested the respondent-Bank to recover the excess payment. He submitted that consequent upon the same, the respondent-bank started recovering Rs.1000/- from the petitioner. He submitted that after passing of the interim order passed by this Court on 29.03.2017, wherein operation of the impugned order had been stayed, no further recovery was effected from the petitioner.

3. Learned counsel submitted that the he confines the scope of the present petition only to the extent of recovery and is not pressing as to whether it was within the rights of the respondent-Nigam to have refixed the pension or not. Regarding the recovery aspect, he made two fold submissions. Firstly the petitioner retired as a class C employee and the pension granted to the petitioner after retirement cannot be recovered in view of the judgment of

Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih, 2015(4) SCC 334.*** Secondly, when the aforesaid order (Annexure P-3) was passed, directing the respondent-Bank to recover the excess pension amount from the petitioner, no notice was issued to the petitioner in this regard. He also submitted that whenever pension is to be reduced because of any reason then it visits the employee or pensioner with civil consequences and at least *principle of natural justice* namely *audi alteram partem* has to be complied with and in the absence of the same, the pension cannot be reduced. He further submitted that grant of pension is not the charity done by any instrumentality of the State but it is rather a Right to Property which is a statutory and a Constitutional Right under Article 300-A of the Constitution of India. He also submitted that it was incumbent upon the respondent-Nigam to have issued a notice to the petitioner, to have apprised him, and to have sought his acquiescence with regard to the same but the same has not been done in the present case and, therefore, the impugned order (Annexure P-3) is liable to be set aside on the ground of violation of *principles of natural justice.*

4. On the other hand, learned counsel appearing on behalf of the respondent-Nigam submitted that since wrong pension was fixed, it was within the rights of the respondent-Nigam to have recovered the excess pension amount given to the petitioner by the respondent-Bank.

5. Today nobody has appeared on behalf of the respondent-bank.

6. I have heard learned counsels for the parties.

7. The only issue involved in the present case is as to whether the respondents could have recovered the excess pension amount, if any, paid to the petitioner without affording him an opportunity of personal hearing and whether

the petitioner's claim is covered by the judgment of Hon'ble Supreme Court in the case of ***State of Punjab Vs. Rafiq Masih's case (supra).***

8. Admittedly, the petitioner was a Class-C employee. The concluding part of the judgment of Hon'ble Supreme Court in the case of ***State of Punjab Vs. 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:*
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> *(i) Recovery from employees belonging to Class-III and ClassIV 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."*

9. A bare perusal of the aforesaid would show that the petitioner is a pensioner and was a class C-employee. In the light of the conclusions drawn by Hon'ble Supreme Court in the aforesaid case, the petitioner's case is squarely covered by the judgment of Hon'ble Supreme Court.

10. Apart from the above, even otherwise also when an instrumentality of the State seeks to reduce the pension of an employee or a pensioner which is

not only a statutory right but also a Constitutional Right under Article 300-A of the Constitution of India, the pensioner cannot be deprived of these rights without being afforded an opportunity of hearing. Admittedly, in the present case, no opportunity of personal hearing has been granted to the petitioner and therefore, this Court is of the considered view that the respondents could not have recovered the pension which has already been granted to the petitioner.

11. Consequently, the present petition is partly allowed. The impugned order dated 11.08.2016 (Annexure P-3) by which the pension of the petitioner was reduced and a direction was issued to the respondent-Bank to recover the excess payment, is hereby set aside. It is made clear that only the recovery aspect is set aside, however, regarding the re-fixation of the pension, this Court has not made any observation. If any amount had been recovered in pursuance of Annexure P-3, the same shall be refunded to the petitioner alongwith interest @ 6% per annum (simple) within a period of four months from today.

(JASGURPREET SINGH PURI)
JUDGE

24.10.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No