



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

221

CWP-27443-2019**Date of Decision : 04.12.2024**

Shant Sagar

.....Petitioner

Versus

Punjab State Power Corporation Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

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

Ms. Nandini Gupta, Advocate for
Mr. Abhilaksh Grover, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 19.12.2017 (Annexure P-6), passed by respondent No.2, whereby the representation made by the petitioner to refund the amount of Rs.60,918/- recovered from the salary of the petitioner on account of travelling allowance being wrongly paid to him, has been rejected. Further, seeking a writ in the nature of mandamus, directing the respondents to return the amount of Rs.60,918/- deducted from the salary of the petitioner along with interest @ 18% per annum.

2. Brief facts of the case, as have been pleaded in the petition, are that the petitioner was initially appointed as Lineman by the respondent-Corporation on 30.11.1988 and was further promoted to the

post of Junior Engineer on 22.06.2012 which is a Group C post. After

**CWP-27443-2019****2**

his promotion, the petitioner was given posting at City Division, Nakodar as head Draftsman and thereafter, in the year 2017 he was transferred to Amritsar. During the service tenure of the petitioner, the respondent-Corporation issued one Finance Circular No.59/2011 with regard to grant of fixed local travelling allowance to the Junior Engineer working in field office of the respondent-Corporation. As per the said circular, the petitioner also started getting the fixed local travelling allowance from the date of his promotion as Junior Engineer. Thereafter, during the audit of Division Office, Nakodar for the year 2015-16, respondent No.4 raised objection that since after promotion as Junior Engineer, the petitioner is working as Head Draftsman at Divisional Office, Nakodar, which is not the field job, therefore, he is not entitled to fixed local travelling allowance which has wrongly been given to him from June, 2012 to October, 2016. In view of the said objection raised by respondent No.4, the respondent-Corporation has made recovery of Rs.60,918/- from the salary of the petitioner. Aggrieved against the said recovery, the petitioner made a representation dated 14.11.2017 to respondent No.2 regarding refund of the amount wrongly recovered from his salary which has been rejected by respondent No.2 vide impugned order dated 19.12.2017. Thereafter, against the order dated 19.12.2017 passed by respondent No.2, the petitioner has made a detailed representation dated 07.03.2018 to respondent No.3 but to no avail. Hence, this petition.

3. Learned counsel for the petitioner submits that the recovery of Rs.60,918/-, on account of travelling allowance being wrongly paid

**CWP-27443-2019****3**

to the petitioner, has been effected from the salary of the petitioner without issuance of any show cause notice or granting any personal hearing in a unilateral manner, which is in violation of the principles of natural justice.

4. On the other hand, learned counsel for the respondents, while referring to the averments made in the reply filed on behalf of the respondents, submits that as per Finance Circular No.59/2011, the only Junior Engineers, who are working in the field are eligible for fixed local travelling allowance and since from the date of his promotion as Junior Engineer, the petitioner was working in the Divisional Office, Nakodar as Head Draftsman, therefore, he was not entitled for the fixed local travelling allowance, which has wrongly been given to him by the respondent-Corporation from June, 2012 to October, 2016. Therefore, there is no illegality in the impugned recovery effected from the petitioner.

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

6. Admittedly, the petitioner was promoted to the post of Junior Engineer on 22.06.2012 and as per Finance Circular No.59/2011, the respondent-corporation had started paying the fixed local travelling allowance to the petitioner from the date of his promotion. However, after the audit of Division Office, Nakodar for the year 2015-16, respondent No.4 raised objection that since after promotion as Junior Engineer, the petitioner was made to work as Head Draftsman at Divisional Office, Nakodar, which is not the field job, therefore, he is



CWP-27443-2019

4

not entitled for fixed local travelling allowance which has been given to the petitioner from June, 2012 to October, 2016. In view of the said objection raised by respondent No.4, the respondent-Corporation has made recovery of Rs.60,918/- from the salary of the petitioner.

7. The facts and circumstances of the present case suggests that it was nowhere the case of the respondents that there was any fraud or misrepresentation on the part of the petitioner to enure the benefit of fetching excess payment, rather the same was being paid by the respondent-Corporation at its own in monthly salary of the petitioner.

8. The Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195*** has laid down circumstances where no recovery can be effected from an employee despite excess payment. The circumstances enumerated in the judgment are not conclusive. The circumstances where the Court has categorically held that no recovery shall be effected are reproduced as below :-

“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.”*

9. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by the principles and parameters laid down in Clauses (i) and (v) of para 12 of the judgment of Hon’ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***.

10. Moreover, the recovery has been effected by the respondents 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.

11. In view of the above, the present petition is allowed and the impugned recovery of Rs.60,918/- effected from the salary of the petitioner is set aside. The respondents are directed to refund the abovesaid amount 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 from the date the same was effected from the petitioner till its actual payment.

04.12.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No