



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

213+102

CWP-24314-2022 (O&M)

Decided on : 28.05.2024

Kewal Krishan

.....Petitioner

Versus

The Punjab Water Resources Management
& Development Corporation Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. A.S. Walia, Advocate for the petitioner.

Mr. S.S. Bedi, Advocate for the respondent.

NAMIT KUMAR, J. (Oral)

CM-9114-CWP-2024

Prayer in the instant application filed under Section 151 of CPC is for placing on record the written statement filed by the respondent-Corporation.

Allowed as prayed for subject to all just exceptions.

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1. In compliance with order dated 08.05.2024, the Managing Director, Punjab Water Resources Management and Development Corporation Limited, SAS Nagar is present in the Court.

2. 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 08.07.2015 (Annexure P-1) passed by the respondent-Corporation to the extent of recovery of Rs.1,31,502/- effected from the leave encashment of the petitioner and



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further sought a writ of mandamus directing the respondents to refund the amount, which has been recovered from the leave encashment of the petitioner.

3. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner joined the respondent-Corporation as Irrigation Booking Clerk on 08.10.1980 and retired, on attaining the age of superannuation, on 30.11.2014. After his retirement the impugned order for recovery of Rs.1,31,502/- from the leave encashment of the petitioner has been passed on 08.07.2015. Hence the present petition.

4. Written statement on behalf of the respondent-Corporation has been filed wherein, it has been averred as under :-

“xx xx xx xx xx

3. *That the contents of Para No.3 of the writ petition is wrong and hence denied. It is submitted that while issuing the order of payment of leave encashment to the petitioner, the recovery of the amount Rs.131502/-was correctly legally and validly made by authorities from the leave encashment amount of the petitioner. It is further submitted that after adopting the proper procedures and under the rules letter No. 1865 dated 15/7/2014 which was issued to the petitioner and was intimated regarding the recovery. It is pertinent to mention here that the petitioner also filed a application to Divisional Engineer Rampura Phul regarding the above said recovery made by respondent. It is also important to mention here that the salary of the petitioner was fixed as per rules. The petitioner was not entitle to the scale 4550-7200 or 5000-8100 and the petitioner was entitle to a salary to a tune of 13840+2800 from dated 1/2006 along with*



only one increment. Accordingly after fixation of salary of petitioner an amount of Rs.129148/ was required to be recovered from the petitioner. The petitioner also received the gratuity amount in which Rs.2354/- was received by him in excess to the actual amount. So respondent department was legally entitled to deduct Rs131502/- (1,29,148/-+2,354/) out of the leave encashment amount of the petitioner of which respondent department was entitled to recover from the petitioner.

xx xx xx xx xx”

5. Learned counsel for the petitioner submits that the petitioner retired on 30.11.2014 and after his retirement an amount of Rs.1,31,502 /-, being alleged excess payment made to the petitioner, has been recovered from his leave encashment. He submits that the impugned recovery has been made on 08.07.2015 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.***

6. On the other hand, learned counsel for the respondent, while referring to the averments made in the reply, submits that there is no illegality or infirmity in the impugned order dated 08.07.2015 as the excess payment was made to the petitioner and the same is liable to be recovered from him.

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



8. Admittedly, the petitioner retired from service on 30.11.2014, on attaining the age of superannuation and after elapse of more than 06 months of his retirement, the impugned recovery of Rs.1,31,502/- has been effected from the leave encashment of the petitioner on 08.07.2015. 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.”

9. 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.

10. Moreover, the recovery has been ordered by the respondent-Corporation 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, this Court is of the considered view that the case of the present petitioner is squarely covered by Clauses (i) to (iii) of the judgment of Hon'ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***.

12. Consequently, the present petition is allowed and the impugned order dated 08.07.2015 (Annexure P-1) to the extent of recovery of Rs.1,31,502/- effected from the leave encashment of the petitioner, is hereby set aside. The respondent-Corporation is directed to refund the amount of Rs.1,31,502/-, deducted from the leave



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encashment, 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.

28.05.2024

Kothiyal

(NAMIT KUMAR)

JUDGE

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