



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

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CWP-37924-2018

Date of decision : 01.10.2024

Charanjit Singh

.....Petitioner

V/S

Punjab Water Resources Management & Development
Corporation Limited and another

...Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Man Mohan, Advocate for the petitioner.

Mr. Sumeet Singh Brar, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, quashing the order dated 28.12.2006 (Annexure P-2), vide which the benefit of 24 years proficiency step up was withdrawn; order dated 22.03.2018, vide which recovery qua 24 years proficiency step up given has been effected from the salary of the petitioner and order dated 13.07.2018 (Annexure P-12), vide which recovery has been effected from the leave encashment of the petitioner. Further, seeking a writ of mandamus, directing the respondents to refund the amounts which have been recovered from the salary and leave encashment of the petitioner along with interest; to released interest on the delayed payment of leave encashment and to release the GIS payment which has not been paid till date.

2. Pursuant to order dated 29.08.2024 passed by this Court,

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Mr. Pawan Kapur, Managing Director, Punjab Water Resources Management & Development Corporation Limited, is present in the Court.

3. Brief facts of the case, as have been pleaded in the present petition, are that the petitioner joined erstwhile Punjab State Tubewell Corporation Limited (now Punjab Water Resources Management & Development Corporation Limited) on 23.04.1980 as Sectional Officer. During the service tenure of the petitioner, the benefits of 24 years proficiency step up was given to him vide order dated 05.11.2004 passed by respondent No.2 which was subsequently withdrawn vide order dated 28.12.2006. On 11.01.2010, respondent No.1 has issued office order with regard to implementation of 5th Pay Commission. As per the said order, before releasing the arrears of salary w.e.f. 01.08.2009, prior verification of salary of employees/officers was required from the Managing Director of the Head Office. Vide order dated 22.07.2013, the salary of the petitioner was refixed from January, 1986 on notional basis in compliance with instructions dated 25.10.2012 issued by Government of Punjab. Vide order dated 23.08.2017, respondent No.1 has directed respondent No.2 to refix the salary of the petitioner w.e.f. 01.01.2006. Vide order dated 12.10.2017, the salary of the petitioner was refixed for the purpose of pre-audit of the salary of the petitioner w.e.f. 01.01.2006 to 01.09.2017 without giving any notice to him. Thereafter, the excess payment amounting to Rs.25,975/- made to the petitioner from 23.04.2004 to 01.01.2006, was ordered to be recovered from his salary vide order dated 22.03.2018 issued by

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respondent No.1. The said amount has been recovered form the salary of the petitioner from June, 2017 to October, 2017. Thereafter, the petitioner has retired from service on attaining the age of superannuation on 31.10.2017. However, till April 2018, amount of leave encashment of the petitioner has not been released. The petitioner vide letter dated 04.05.2018 requested respondent No.2 to release the amount of leave encashment. Thereafter, vide order dated 13.07.2018, the leave encashment amounting to Rs.9,38,350/- was sanctioned, however, out of which recovery of Rs.1,92,204/- has been ordered to be effected without giving any notice or opportunity of personal hearing to the petitioner. The leave encashment of Rs.7,46,146/- after deducting Rs.1,92,204/- has been released to the petitioner on 27.09.2018 without giving any interest. Hence, this petition.

4. Learned counsel for the petitioner submits that the petitioner has retired from service on attaining the age of superannuation on 31.10.2017 and after his retirement, orders dated 22.03.2018 and 13.07.2018 have been passed, whereby recovery of Rs.25,975/- from salary of the petitioner and Rs.1,92,204/- from the amount of leave encashment, respectively, have been ordered to be effected without issuance of any show cause notice or granting any personal hearing in a 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.***

5. He further submits that leave encashment amounting to

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Rs.7,46,146/- after deducting Rs.1,92,204/- has been released to the petitioner on 27.09.2018. Since the amount of leave encashment has been released to the petitioner after a considerable delay, therefore, the petitioner is entitled to interest on the same.

6. During the course of hearing, learned counsel for the petitioner restricts his claim for refund of amount recovered from his salary and leave encashment along with interest and interest on the delayed payment of leave encashment.

7. On the other hand, learned counsel for respondents, while referring to the averments made in the reply, has tried to justify the passing of impugned orders by stating that recovery was made against the petitioner due to his wrong pay fixation, and he was paid excess amount and the same was liable to be recovered.

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

9. Admittedly, the petitioner has retired from service on attaining the age of superannuation on 31.10.2017 and after his retirement, recoveries of an amount of Rs.25,975/- from his salary and Rs.1,92,204/- from his retiral benefits, being alleged excess payment made to him, have been effected, vide impugned orders dated 22.03.2018 and 13.07.2018, respectively, passed by the respondents.

10. 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 respondents is totally contrary to the law laid down by the Hon'ble Supreme Court in ***State of Punjab Vs.***



Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195. 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.”

11. The facts and circumstances of the present case suggests that it is not the case of the respondents that it was due to some fraud or misrepresentation of the petitioner that he was granted excess payment but it was granted by the respondents-Corporation on their own.

12. Moreover, the recovery has been effected by the respondents in violation of the principles of natural justice as neither



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any show cause notice was issued to the petitioner nor he was granted an opportunity of personal hearing.

13. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by the judgment of Hon'ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***. Consequently, the impugned orders dated 22.03.2018 and 13.07.2018, whereby recoveries of Rs.25,975/- and Rs.1,92,204/- have been effected from the salary and leave encashment of the petitioner are quashed and set aside. The respondents are directed to refund the abovesaid amounts 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.

14. So far as the claim of the petitioner for grant of interest on the delayed payment of leave encashment is concerned, since either before or after the retirement, no departmental/criminal proceedings were pending against the petitioner, therefore, his retiral dues were required to be released within a reasonable time after his retirement. However, his leave encashment amounting to Rs.7,46,146/- after deducting Rs.1,92,204/- has been released to the petitioner on 27.09.2018 i.e. after a lapse of 11 months. Since there is a considerable delay in releasing the retiral benefits to the petitioner, therefore, the petitioner cannot be denied the benefit of interest on the same.

15. A Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others : 1997(3) S.C.T. 468*** has held that where there is an



inordinate delay in releasing benefits and the delay is not justifiable, employee will be entitled for interest. The relevant paragraph of said judgment is as under:-

“Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement.”

16. Apart from this in ***J.S. Cheema Vs. State of Haryana : 2014(13) RCR (Civil) 355***, this Court had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of the said judgment is as under: -

“5.....The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”



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17. In view of the above factual position and settled principles of law, the respondent-Corporation is directed to pay interest @ 6% per annum to the petitioner, on the delayed payment of leave encashment, w.e.f. 01.01.2018 (i.e. after two months of his retirement) till the actual date of payment, within a period of 03 months from the date of receipt of certified copy of this order.

18. Disposed of in above terms.

19. With regard to other claim(s) of the petitioner, liberty is granted to him to raise his grievance at appropriate level, in accordance with law.

01.10.2024
kothiyal

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No