

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.34413 of 2019 (O&M)
Date of decision: 28.02.2024

Guddar Singh
.....Petitioner
Versus
Punjab State Transmission Corporation Limited and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. V.K. Shukla, Advocate
with Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Vivek Sharma, Advocate
for the respondents.

NAMIT KUMAR J.

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India, for issuance of a writ in the nature of ceritiorari, for quashing the order dated 12.01.2018 (Annexure P-2), vide which the petitioner has been ordered to retire from service w.e.f. 31.01.2016, on attaining the age of superannuation of 58 years and the order dated 02.05.2018 (Annexure P-3), whereby recovery of Rs.7,34,575/-, along with interest w.e.f. 01.12.2016, has been ordered against the petitioner. Further a writ of mandamus has been sought for directing the respondents to release the retiral benefits of the petitioner viz. Pension, Commuted Pension, Gratuity, Leave Encashment and General Provident Fund, etc. along with interest @ 12% per annum.
2. The brief facts, as have been pleaded in the present

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petition, are that the petitioner initially joined the erstwhile Punjab State Electricity Board (now Punjab State Power Corporation Limited) as daily wage worker and later on, he was converted as Work Charge T-Mate vide order dated 12.07.1999 and thereafter, he was regularized as Assistant Lineman vide order dated 18.06.2010. It is the case of the petitioner that at the time of entering into service, he has furnished his date of birth as 14.01.1958 and the said date of birth is also recorded in the order dated 18.06.2010 (Annexure P-1) according to which, the petitioner was to retire on attaining the age of superannuation on 31.01.2016, however, he was allowed to continue in service till 12.01.2018, when he was ordered to be retired from service w.e.f. 31.01.2016, with retrospective effect and thereafter, vide order dated 02.05.2018, recovery of Rs.7,34,575/- has been ordered against the petitioner. Hence the present petition.

3. While issuing notice of motion on 26.11.2019, recovery of the amount against the petitioner was stayed.

4. Written statement on behalf of respondents No.1 to 4 has been filed, wherein it has been stated as under:-

“2. That the petitioner has got date of birth recorded as 14.1.1958 while joining/regularising the services. The said fact is clear from reading of appointment letter dated 18.6.2010 (P-1). The petitioner has also admitted the same in para 2 of the writ petition. The petitioner has also admitted that he was due to retire on 31.1.2016, but he worked till 12.1.2018, when he was retired, realizing that he managed got his date of birth changed from 14.1.1958 to 26.5.1963 while sending HR Data Form of the employee to Patiala on 29.4.2005. A copy of the affidavit dated 22.6.1999 is annexed herewith as Annexure R- 1. The petitioner has also shown his PAN CARD date of birth as

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26.5.1963. The petitioner thereafter was being promoted to Assistant Lineman on 21.6.2010 and the petitioner gave the date of birth again as 14.1.1958 and in this regard he submitted affidavit also. A copy of the affidavit dated 18.6.2010 is attached as Annexure R-2. Since the petitioner had given two dates of birth, the date of birth certificate submitted by the petitioner showing his date of birth as 14.1.1958 was verified and sent to District Registrar Birth and Death, Ferozepur for verification. The said certificate was found to be correct. A copy of the reply dated 13.11.2017 given by Registrar, Ferozepur is attached herewith as Annexure R-3. and accordingly legal opinion was sought and it was opined vide letter dated 5.1.2018 that original date of birth of the petitioner is 14.1.1958. A copy of the letter dated 5.1.2018 is appended herewith as Annexure R-4. Thereafter the Department immediately retired the petitioner. It clearly shows the illegal action of the petitioner by misguiding the employer and has thus taken an undue benefit of working since 31.1.2016. Thus, the impugned recovery has also been affected vide order dated 2.5.2018 from the petitioner. It clearly shows that the petitioner has not come with clean hand and therefore, on this short ground alone the present writ petition deserves to be dismissed with heavy cost.

3. That the petitioner has admitted his retirement and has not challenged the same. He even submitted an affidavit regarding deposit of amount of board share of EPF alongwith interest for service rendered on work charge basis to the effect that this amount will be deposited by him. Accordingly, order dated 28.5.2019 (P-4) was issued and his work charge service from 12.7.1999 to 20.6.2010 has been counted towards regular service for grant of pensionary benefits. But the petitioner has not deposited the said amount till date. On this ground as well the present writ petition deserves to be dismissed with heavy cost."

5. Learned counsel for the petitioner submits that since the petitioner had already worked upto 12.01.2018, therefore, no recovery can be effected from him on account of services rendered by him to the department after 31.01.2016 till 12.01.2018 as there is no

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misrepresentation/fraud played on the part of the petitioner. He further submits that while ordering recovery against the petitioner, neither any show cause notice has been issued nor an opportunity of personal hearing has been granted to the petitioner which is in violation of principles of natural justice.

6. Per contra, learned counsel for the respondents submits that since the petitioner has managed to get his date of birth changed from 14.01.1958 to 26.05.1963, while sending the H.R. Data Form and in the PAN Card also, his date of birth is mentioned as 26.05.1963, therefore, his date of birth as 14.01.1958 was verified through the Registrar, Births and Deaths, Ferozepur which found to be correct and, thus, the recovery has rightly been ordered against the petitioner.

8. The petitioner has filed replication to the written statement filed by the respondents reiterated his claim and submits that as per Rules 9.1 to 9.10 of Chapter-IX of Punjab Civil Services Rules Volume-II, Part-II, the entire negligence in not retiring the petitioner on the due date and allowing him to continue in service till 12.01.2018 is absolutely attributed to the respondents themselves. He further submits that he has not paid the board share of E.P.F. since his retiral benefits have not been processed. However, he undertakes that he would always be ready and willing to get the same deposited/deducted from the proceeds of retiral benefits of the petitioner.

9. I have heard learned counsel for the parties and perused the record with their able assistance.

10. Admittedly, while ordering recovery against the petitioner,

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neither any show cause notice has been issued nor an opportunity of personal hearing was granted to him, which is in violation of principle of natural justice. Undisputably, The actual date of birth of the petitioner has been recorded in his service record as 14.01.1958 and the respondents could have retired him on 31.01.2016 on completion of age of superannuation of 58 years in terms of relevant provisions of service rules, however, he was allowed to continue in service upto 12.01.2018 and had drawn his salary from 31.01.2016 to 12.01.2018, which cannot be allowed to be recovered though they have retired him retrospectively. Although, it is the case of the respondents that the petitioner has given his date of birth as 26.05.1963, in the H.R. Data Form, however, the said Form has not been attached with the written statement. Even otherwise except for continuation in service beyond 31.01.2016 till 12.01.2018, no other benefit has been granted to the petitioner. During the course of arguments, it has been stated by learned counsel for the respondents that vide order dated 28.05.2019 (Annexure P-4), the Work Charge service of the petitioner from 12.06.1999 to 20.06.2010, has been counted towards regular service for grant of pensionary benefits, however, the petitioner has not deposited the EPF share of Rs.3,32,239/- and on account of retiral dues, the petitioner is entitled to receive a sum of Rs.6,60,747/- and the said amount has not been released to the petitioner as he has not deposited the abovesaid amount of Rs.3,32,239/-. Recovery of an amount of Rs.7,34,535/- was already stayed by this Court vide order dated 26.11.2019 and the same is made absolute.

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11. In view of the above facts and circumstances and to balance the equity between the parties, the order of recovery dated 02.05.2018 (Annexure P-3), is set aside and the present petition is disposed of with a direction to the respondents to adjust the amount of Rs.3,32,239/- which is pending towards the petitioner as board share of E.P.F., out of the total due amount of Rs.6,60,747/- and release the remaining amount to the petitioner within a period of 02 months from the date of receipt of certified copy of this order. He shall be granted his pension accordingly. However, keeping in view the conduct of the petitioner for providing two dates of birth amounting to misguiding the employer, he is held not entitled for interest on the delayed retiral dues.

(NAMIT KUMAR)
JUDGE

28.02.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No