IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23901-2018 (O&M)
Reserved on: 27.02.2025
Pronounced on: 03.03.2025

RASHPAL SINGH

. . . .PETITIONER

Vs.

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS

. . . . RESPONDENTs

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. P.K. Goklaney, Advocate, for the petitioner.

Mr. Saurav Dogra, Advocate, for the respondents.

DEEPAK GUPTA, J.

By way of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of the Writ in the nature of certiorari for quashing the letter dated 18.07.2018 *(Annexure P3)* issued by respondent No.5, alleging the same to be illegal. Further prayer is made to direct the respondent-department to refund the amount as recovered from the pension of the petitioner, along with interest @ 9% per month from the date of deduction, till actual payment.

2. Petitioner was working under the respondent-department as SSA and retired on 30.04.2017, on attaining the age of superannuation. Respondent-department issued Finance circular No.5/2018 dated 01.02.2018 *(Annexure P1)* giving right to opt in the revised pay scale w.e.f. 01.01.2006. Petitioner submitted his option vide letter dated 06.02.2018 *(Annexure P2)* to revise his pay scale in view of the said circular dated 01.02.2018. His pay scale was accordingly revised by the respondent-department and after the revision, an amount of ₹61,623/- was deposited in the bank account of the petitioner by way of arrears. However, later on, Accounts Officer/EAD of the respondent-department issued a letter dated 18.07.2018 *(Annexure P3)* stating therein that circular No.5/2018 is not applicable to the retiree. On the

basis of this letter, petitioner was asked to refund back the arrears as paid to him by way of installments.

3.1 It is contended by Ld. Counsel for the petitioner that pay of petitioner has been revised in view of the circular dated 01.02.2018 *(Annexure P1)* and that even if the said circular is not applicable to the petitioner, no recovery can be effected in view of the judgment passed by Hon'ble Supreme Court in ***State of Punjab and others*** *Vs.* ***Rafiq Masih and others [Civil Appeal No.11527 of 2014 arising out of SLP (C) No.11684 of 2012]***. It is pointed out that on the basis of the aforesaid judgment, even the respondent-department had issued instructions dated 28.08.2015 *(Annexure P6).* Petitioner also submits that respondent-department had recovered an amount of ₹15,000/- in the month of August 2018 illegally and so, respondent-department is required to refund the same.

3.2 Alleging the action of the respondent in effecting the recovery to be totally illegal, arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India, petitioner has prayed for issuance of the appropriate writ.

4.1 Opposing the petition, though it is not disputed that petitioner had given his option on 06.02.2018 in the light of finance circular No.5/2018, but it is submitted that on 29.05.2018, in a meeting held with the Senior Executive Engineer, Zira and the Pension Association regarding the pension cases, it was requested to apply the said circular to the case of petitioner and the payment of arrears be made to him assuring that in case payment of the arrears to petitioner is found to be wrong as per the finance circular No.5/2018, then the said amount shall be returned by the petitioner to the PSPCL. In view of the said assurance, the arrears of ₹61,623/- were released to the petitioner in the month of June 2018 in arrears ledger. However, after making the said payment, case of the petitioner was sent to the Accounts Officer/EAD, PSPCL vide letter dated 09.07.2018, who sent back the petitioner's case vide letter dated 18.07.2018 with the intimation that Finance Circular dated 5/2018 was not applicable on the retirees.

4.2 Contention of ld. counsel for the respondents is that employer-employee relation between the petitioner and respondent department was snapped immediately on his retirement from the service and therefore, Finance Circular *(Annexure P1)* was not applicable to the case of retiree employees.

4.3 With these submissions, prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and have appraised the record.

6. Finance Circular No.5/2018 *(Annexure P1)* reads as under: -

> "Sub: To give right to opt in the new revised pay scale from 1.1.2006.
>
> Punjab State Power Corporation Ltd. in 63rd meeting of Board of Directors held on 9.1.2018, Mohali, during meeting in the reference subject cited above, following decision has been taken:-
>
> > "RESOLVED THAT approval be and is hereby accorded to grant right of option (One time measure) within one month from the date of issue of these instructions/circular to those employees who have not exercised their option on promotion in time under Regulation-11 of Finance Circular No.15/2009 dated 15.10.2009 promoted during 01.01.2006 to 14.10.2009 and from 15.10.2009 upto the date of issue of instructions. But those employees who have already exercised their option, are not entitled to exercise their option again."

7. Admittedly, petitioner had retired from service on 30.04.2017, whereas Finance Circular No.5/2018 had been issued on 01.02.2018 i.e. after the retirement of the petitioner. The right to opt in new revised pay scale from 1.1.2006 was to be exercised within one month to those employees, who had been promoted during 01.01.2006 to 14.10.2009 and from 15.10.2009 up to the date of issuance of the instructions. It is undisputed that the petitioner had been promoted as SSA on 18.07.2007 and had opted for new revised pay scale vide his letter Dated 6.2.2018 *(Annexure P-2).* There

is nothing in the circular *Annexure P-1* to show that it was applicable only to serving employees; or created bar on the retired employees to exercise the option under circular *Annexure P1*. Therefore, it is held that the said circular *Annexure P1* is applicable to the case of the petitioner also and as such, the arrears of pay has been rightly paid to him.

8. Consequently, present petition is allowed. Letter dated 18.07.2018 *(Annexure P3)* issued by respondent No.5 to the effect that Finance circular *Annexure P-1* was applicable to retired employees is held to be illegal. Respondent-department is directed to refund the amount as recovered from the pension of the petitioner based on impugned letter *Annexure P-3*, along with interest @ 6% per annum from the date of deduction till actual payment.

(DEEPAK GUPTA)
JUDGE

03.03.2025
Vivek

Whether speaking/reasoned? *Yes*
Whether reportable? *No*