2026:PHHC:002124

240 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-26763-2023
Date of decision: 12.01.2026

GURDEEP SINGH ....Petitioner

Versus

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS ....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Mr. K.S. Kharbanda, Advocate
for the respondents.

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HARPREET SINGH BRAR, J (Oral):

The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the impugned Gratuity Pay Order (GPO) dated 06.02.2023 (Annexure P-6), whereby an amount of ₹5,16,757/- has been recovered from the gratuity of the petitioner. A further writ in the nature of mandamus is sought, directing the respondents to refund the recovered amount along with interest and to release full pensionary benefits to the petitioner.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner was appointed as a Bill Distributor in the year 1998 and was promoted to the post of Lower Division Clerk (LDC) on 18.11.2013 under the 20% quota reserved for departmental promotees. The petitioner opted for voluntary retirement, which was accepted w.e.f. 30.11.2022. After

retirement, an audit objection was raised stating that the petitioner had not passed the computer typing test, a condition stipulated in the promotion order. Consequently, a sum of ₹5,16,757/- was recovered from his gratuity vide order dated 06.02.2023.

3. Further, the learned counsel submits that the recovery is wholly illegal and violative of the principles laid down by the Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih (2015) 4 SCC 334***, wherein it has been categorically held that recovery from retired employees, especially those belonging to Class III and IV, is impermissible. He further submits that the requirement of passing a computer typing test under Regulation 8 of the PSEB Ministerial Services (Class III) Regulations, 1985, (herein after Rules of 1985) as amended, applies only to direct recruits under the 80% quota and not to promotees like the petitioner. Moreover, the recovery was effected without issuing any show-cause notice or affording a personal hearing, thereby violating the principles of natural justice in terms of the judgement of the Hon'ble Supreme Court in ***M/s Daffodils Pharmaceuticals Ltd. v. State of Uttar Pradesh (2019) 12 JT 283***.

4. *Per contra*, learned counsel for the respondents vehemently opposes the petition and submits that the petitioner's promotion was conditional upon clearing the computer test within one year, as per the promotion order and circular dated 24.03.2006. The petitioner failed to comply with this condition, and therefore, the increments paid to him were erroneously released. The recovery is thus justified and in accordance with

the undertaking given by the petitioner, wherein he agreed to refund any excess payment made to him.

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

6. The core issue that arises for consideration is whether the recovery of ₹5,16,757/- from the gratuity of the petitioner after his retirement is legally sustainable.

7. The law on the subject is no longer res integra. The Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih (2015) 4 SCC 334*** has laid down exhaustive guidelines regarding recovery from employees. It has been held that recovery from retired employees, or those who are due to retire within one year, is impermissible. The Hon'ble Apex Court in ***Rafiq Masih (supra)*** observed that,

> *"12. … as a ready reference, we may 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."*

8. In the present case, the petitioner retired on 30.11.2022, and the recovery was effected on 06.02.2023. Thus, the recovery squarely falls

within the prohibited category as per the judgment rendered in ***Rafiq Masih (supra).***

9. Furthermore, the recovery has been made from the part of gratuity payable to the petitioner. The law with regard to withholding gratuity - partially or completely is well settled. A Two Judge Bench of the Hon'ble Supreme Court in ***Y.K. Singla v. Punjab National Bank, (2013) 3 SCC 472*** speaking through Justice J.S Khehar observed that,

> *"**22.** In order to determine which of the two provisions (the Gratuity Act or the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:*
>
> > *"**14.Act to override other enactments, etc.**—The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."*
> >
> > *(emphasis supplied)*
>
> *A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant."*

10. A Two Judge Bench of the Hon'ble Supreme Court in ***Jyotirmay Ray v. The Field General Manager, Punjab National Bank 2023 INSC 979*** while speaking through Justice J.K Maheshwari made the following observation,

*“20. The Bank harmonizing the provisions of Regulation 46 of 1979 Regulations and the Gratuity Act issued Circular No. 1563 on 16.01.1997 through its personnel division. Therein harmonizing the Regulations with the provisions of the Gratuity Act and in clauses 8 and 14 of the Circular, the instances as to **when gratuity could be forfeited**, have been specified. Those clauses are relevant and have been reproduced as under:*

"8. FORFEITURE OF GRATUITY UNDER ACT

The gratuity payable under the payment of gratuity act, is liable to full or partial forfeiture under different circumstances. Section 4(1) of payment of gratuity act deals to payment of gratuity whereas section 4(6) of the act deals with forfeiture of gratuity. Section 4(1) reads as under:

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five Years,

a. On his superannuation, or

b. On his retirement or resignation, or

c. On his death or disablement due to accident or disease.

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Section 4(6) provides as under:

> *"Notwithstanding anything contained in sub-section (1)*
>
> *a. The gratuity of an employee, **whose services have been terminated f**or any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employee, **shall be forfeited** to the extent of the damage or loss so caused:*
>
> *b. The gratuity payable to an employee may be wholly or partially forfeited.*
>
> *I) If the services of such employee **have been terminated** for his riotous or disorderly conduct or any other act of violence on his part, or*
>
> *II) If the services of such employee **have been terminated** for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.*
>
> ***14. PAYMENT UNDER OFFICERS SERVICE REGULATIONS***
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> *Rules relating to payment of gratuity of officers staff have been laid down under Regulation 46 of PNB Officers Service Regulations, 1979 which is as under:-*
>
> *(I) Every officer shall be eligible for gratuity on:*
>
> *(a) Retirement, (b) death (c) disablement rendering him unfit for further service as certified by a medical officer approved by the bank, or (d) resignation after completing ten years of continuous service or termination of service in any other way*

> *except by way of punishment after completion of 10 years of service.*
> *Explanation: We have to clarify that gratuity may be paid in case of termination of service, subject to the condition that the officers has put in at least 10 years of service with the bank and provided that the termination is not by way of dismissal or removal from service as punishment.*
> *(II) The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.*
> *Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of month pay for each completed year of service beyond thirty years.*
> *Pay for the purpose of gratuity in case of officer shall mean basic pay only. While calculating gratuity, that part of PQA & FPA drawn by an officer, which rank for superannuation benefit, shall also be taken into account.*
> *Note: If the fraction of service beyond completed years of service is six months or more, gratuity will be paid pro-rata for the period. In this connection, we have to clarify that for the purpose of calculating gratuity, the number of days, beyond 6 months period is also to be taken into account."*
>
> *On a combined reading of the provisions of the Gratuity Act, 1979 Regulations and the circular, it becomes clear that the* ***gratuity shall become payable to every officer on retirement, death, disablement or on resignation except in a case of termination of service*** *in any other way, by way of punishment after completion of 10 years of continuous service."*

11. Admittedly the petitioner was not terminated as he opted for voluntary retirement which was duly accepted by the respondents. In the given scenario it would not be permissible in law to withhold part of the gratuity and the same must have been released to him within two months from the date of his retirement.

12. Additionally, the respondents primarily rely on the circular dated 24.03.2006 and letter dated 05.02.2001 (Annexure P-11), which lays down the criteria for typing test. Admittedly, Regulation 8 of the Rules of 1985 have not been amended till date, according to which the computer proficiency test applies only on the direct recruits under 80% and not on

candidates under 20% promotion quota, to which the petitioner belongs. This creates a conflict in the eligibility criteria established under the Rules of 1985 and Circular dated 24.03.2006 (Annexure P-11). It is trite law that any circular cannot supersede the statutory rules. Reliance in this regard may be placed on the judgement rendered by the Hon'ble Supreme court in ***Ram Ganesh Tripathi v. State of U.P., 1997(1) SCT 494 (SC) : AIR 1997 SC 1446*** and this court in ***Sukhdarshan Singh v. State of Punjab CWP-1221-2021***.

13. Further a bare perusal of the Regulation 9 which is reproduced as under, reveals that any ineligibility can be exempted by the secretary if the employee has completed the age of 50 years with a good record.

> *"Rule: 9: EXEMPTION*
> *a) The Secretary can exempt any employee for passing the Departmental Test stipulated under the Ministerial services. The consideration on the exemption will be taken in severe conditions keeping in view the following facts :-*
> ***i) The employee must have completed the age of 50 years***
> ***ii) The record of the employee becomes good and unblemished.***
> *iii) The employee must have completed at least 4 attempts.*
> *B) That after the exemption being granted to the employee, the any kind of ineligibility in the consideration case of his promotion will not left after this."*

14. Admittedly the petitioner was promoted to the post of LDC in 2013 and continued to serve in the said promoted post until 2022 until his retirement. The respondents extracted the work of LDC from the petitioner continuously for 9 years and the petitioner falls within the criteria for individuals who could be exempted from any eligibility criteria as on the date of retirement his age was 52 years. Given that the petitioner satisfied the eligibility criteria for exemption under the rules, and considering the respondents permitted him to discharge duties on the promoted post continu-

ously for nine years while drawing corresponding salary and increments, their conduct amounts to a deemed grant of exemption. The employer, having accepted the benefit of his services throughout this extended period, cannot retrospectively enforce the condition of passing the test to justify recovery after retirement.

15. In view of the foregoing discussion, the impugned recovery cannot be sustained in law.

16. Consequently, the present writ petition is allowed. The impugned dated 06.02.2023 (Annexure P-6) is hereby quashed. The respondents are directed to refund the amount of ₹5,16,757/- recovered from the petitioner’s gratuity, along with interest at the rate of 6% per annum from the date of recovery till the date of actual payment. The respondents are further directed to release the full pensionary benefits to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

17. Pending application(s), if any, shall stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

12.01.2026
monika

1. Whether speaking/ reasoned : Yes /No
2. Whether reportable : Yes /No