
(2014) 01 P&H CK 0137
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24230 of 2012 (O and M)

Dharam Pal

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2014) 01 P&H CK 0137

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : M.K. Dogra, for the Appellant; Aman Bahri, A.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—Challenge in the present petition is to the action of the respondents, whereby recovery of Rs. 2,86,852/- is sought to be made from the petitioner on account of alleged excess payment. Learned counsel for the petitioner submitted that the petitioner was appointed as Carpenter in Communication Division of Ranjit Sagar Dam, Pathankot on 22.1.1986. In terms of the report of 3rd Pay Commission, the petitioner was granted pay scale of Rs. 1200-2100 with effect from the date of his appointment, as the scales were to be granted w.e.f. 1.1.1986. He continued getting salary in terms thereof and even the subsequent pay revision on the basis thereof. In the year 2002, the department sought to withdraw the aforesaid scale in terms of the report of the Committee dated 11.9.2002. Number of writ petitions were filed in this court including CWP No. 1067 of 2003--Thein Dam Workers Union (Regd.) Shahpurkandi v. State of Punjab and others, which was disposed of on 27.3.2009, wherein while upholding the action of the respondents in re-fixing their pay, the matter regarding recovery of the past period was left open. Despite the aforesaid order being there, the department still continued paying the petitioner salary in terms of the pay fixed earlier, as no re-fixation was made. The petitioner retired from service on 31.5.2012. It was only thereafter that pay

of the petitioner has been re-fixed and recovery for the past period was sought to be made. In fact, the amount has already been recovered from the gratuity of the petitioner. The submission is that the petitioner was a low paid employee. He was not at fault either in fixation of his pay in the scale of Rs. 1200-2100 from the date he was appointed or in not in re-fixation thereof either after the order passed by the Committee or even dismissal of the writ petition by this court. Out of the gratuity of Rs. 3,12,356/- payable to the petitioner, Rs. 2,86,852/- have been deducted. Learned counsel for the petitioner, while relying upon a judgment of this Court in CWP No. 18739 of 2012--Gurbax Singh v. State of Punjab and others, decided on 4.12.2012, submitted that under identical circumstances, recovery sought to be made by the department was quashed and the amount already recovered was directed to be refunded. He further submitted that the aforesaid judgment has attained finality, as no appeal has been preferred against the same.

2. On the other hand, learned counsel for the respondents submitted that the petitioner was well within knowledge of the fact that his pay has been wrongly fixed after the Committee had reported so on 11.9.2002. After dismissal of the writ petition by this court on 27.3.2009, a general order was passed regarding re-fixation of pay of the similarly situated persons and also recovery of the excess paid amount. Thereafter, the amount already excess paid was recovered when the petitioner retired on 31.5.2012.

3. Heard learned counsel for the parties and perused the paper book.

4. In the case in hand, pay of the petitioner was fixed in the scale of Rs. 1200-2100 from the date of his initial appointment for which the petitioner cannot be faulted with. No doubt, it is claimed that error was discovered in the year 2002, however, still thereafter the matter remained pending in the court and even after decision of the writ petition on 27.3.2009, no action was taken by the authorities either to re-fix the pay or recover the excess paid amount from the petitioner. The petitioner retired on 31.5.2012. The alleged excess paid amount was recovered from the gratuity payable to the petitioner. Considering the fact that the petitioner was working as a Carpenter, he cannot be said to be highly paid employee. In Gurbax Singh's case (supra), this court considered an identical issue pertaining to the Welder appointed in Ranjit Sagar Dam Project at the same time. Recovery of the alleged excess paid amount was made from the gratuity paid to him on the date of retirement on 31.10.2011, which was quashed by this court and it was directed that the amount already recovered be paid to him. Relevant part thereof is extracted below: The issue as regards recovery of financial benefit granted to an employee on account of bonafide mistake/wrong fixation is no longer res integra. A Full Bench decision of this Court in the case of Budh Ram and Others Vs. State of Haryana and Others, had clearly taken a view that if there be no fraud or misrepresentation attributed to an employee, financial benefit that had already been released in favour of such employee, cannot be recovered. Thereafter, such issue came up for consideration

in a recent judgment of Hon''ble Apex Court in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, Their Lordships of the Supreme Court have held that even though no general principle of law has been laid down that only if there is misrepresentation or fraud on the part of the recipient of the money then such excess payment could be recovered, but at the same time had noticed certain exceptions in the nature of employees who already stood retired or were on the verge of retirement or belong to the lower hierarchy in the scheme of administration.

There is no dispute as regards the fact that the present petition had served the respondent/authorities on the post of Welder and stood superannuated w.e.f. 31.10.2011. The petitioner would clearly fall within the exception as noticed by the Hon''ble Apex Court in the case of Chandi Prasad Uniyal (supra) and the benefit of pay scale of Rs. 1200-2100/- that has been granted to him while in service and that too not on account of any misrepresentation on his part could not have been recovered from him post retirement. The action of the respondent/authorities in having withheld an amount of Rs. 2,14,205/- out of the sanctioned amount of gratuity of Rs. 2,91,695/- without even passing a specific order to such effect is held to be bad in law.

For the reasons mentioned above, the writ petition is allowed. The action of the respondents in deducting Rs. 2,86,852/- from the gratuity payable to the petitioner is declared illegal. The respondents are directed to refund the aforesaid amount within a period of three months from the date of receipt of copy of the order.