(2015) 02 P&H CK 0227

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 12788-2014

Harbans Lal	APPELLANT
Vs	
Uttar Haryana Bijili Vitran Nigam Limited and Others	RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 02 P&H CK 0227

Hon'ble Judges : Paramjeet Singh, J.

Bench : Single Bench

Advocate : Naveen Daryal, for the Appellant; P.S. Poonia, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Paramjeet Singh, J.—Instant writ petition has been filed under Article 226 of the Constitution of India for quashing the recovery order dated 17.04.2014 (Annexure P-3) issued by respondents No. 3 and 4 after the retirement of the petitioner.

2. Brief facts of the case are to the effect that the petitioner was appointed as a Bill Distributor on regular basis w.e.f. 01.12.1972 through employment exchange. The work and conduct of the petitioner remained good throughout his service and he was promoted to the post of Meter Reader on 14.11.1979. Further, the petitioner was promoted to the post of U.D.C. on 24.06.2010. The petitioner retired on 28.02.2014 after attaining the age of superannuation. Prior to his retirement, the petitioner made representation to the department for granting 3rd A.C.P. Respondent No. 4 has now issued order dated 17.04.2014 (Annexure P-3) for releasing the gratuity amount of Rs. 5,20,429/- in favour of the petitioner after deducting an amount of Rs. 41,363/- without any show cause notice to the petitioner. It is also the case of the petitioner that the petitioner also made representation dated 23.03.2014 (Annexure P-4) to the respondents for re-fixation of pay after granting the annual increment.

3. In pursuance of notice of motion, the respondents put in appearance and filed written statement with the averments that claim of the petitioner for grant of 3rd ACP Scale on promotional post i.e. Meter Reader in the pay scale of Rs. 5200-20200 with Grade Pay Rs. 3,600/- after completion of thirty years regular satisfactory service has been rejected by the competent authority vide letter dated 09.10.2014 (Annexure R-3/1) as he is not entitled to the same as per the prevailing instructions for grant of the ACP. The petitioner has already been granted 3rd ACP Scale in the Pay Band-I with Grade Pay of Rs. 3,300/- w.e.f. 01.01.2006 on completion of 30 years regular satisfactory service reckoning from his entry in service as Bill Distributor in the erstwhile HSEB now UHBVN. The recovery of Rs. 41,363/- has been rightly made from the gratuity on account of one additional increment, which was inadvertently granted to the petitioner w.e.f. 01.07.1992.

4. I have heard learned counsel for the parties and perused the record.

5. So far as the issue in respect of effecting recovery from an employee after his retirement is concerned, the same has already been dealt with by the Hon''ble Supreme Court in Civil Appeal No. 11527 of 2014, titled ''State of Punjab and others v. Rafiq Masih (White Washer) etc.'', decided on 18.12.2014 and it has been held 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.

13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within

the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms."

6. In the present case, the petitioner retired as U.D.C. on 28.02.2014. Vide impugned order dated 17.04.2014 (Annexure P-3), an amount of Rs. 41,363/- has been ordered to be deducted from the gratuity of the petitioner after his retirement. The issue of effecting recovery from the petitioner as involved in the present writ petition falls within the first three categories mentioned in Rafiq Masih''s case (supra), therefore, the respondents-department cannot deduct the amount from the gratuity of the petitioner and the impugned order (Annexure P-3) to the extent of deducting the amount shall be deemed to have been set aside.

7. A Coordinate Bench of this Court in CWP-1742 of 2013, titled ''Gopal Krishan v. Uttar Haryana Bijli Vitran Nigam Limited and others'', decided on 12.12.2014 has dealt with the issue of grant of interest on delayed payment of retiral benefits and held as under:

"Be that as it may be, delay has taken place in making the different payments to the petitioner on account of different service benefits. Keeping in view the given facts and circumstances of the present case noticed herein above, although some delay is certainly attributable to the petitioner but the entire delay cannot be held to be the responsibility of the petitioner alone. As per the peculiar facts and circumstances of the case, the delay seems to have occurred because of contributory negligence of both the parties.

In view of the above and striking a balance between the parties, interest of justice would be adequately met, if the respondents are directed to pay interest @ 9% per annum to the petitioner from the date when different amounts became due till the date of actual payment.

Consequently, the respondents are directed to do the needful within a period of three months from the date of receipt of certified copy of this order. However, if the needful is not done within the stipulated period, the petitioner would be entitled for interest on the delayed payment @ 12% per annum.

Resultantly with the above said observation made and directions issued, the present writ petition is partly allowed, however, with no order as to costs."

8. Since the relief claimed by the petitioner for grant of 3rd ACP Scale on promotional post has already been rejected by the competent authority vide letter dated 09.10.2014 (Annexure R-3/1) as is evident from the written statement, learned counsel for the petitioner wants to withdraw the petition qua his claim for grant of 3rd ACP Scale with liberty to challenge the letter dated 09.10.2014 by filing fresh petition. Ordered accordingly.

9. The issue of effecting recovery from the petitioner after his retirement and issue of grant of interest on delayed payment of retiral benefits are squarely covered by the judgments rendered in Rafiq Masih''s case (supra) and Gopal Krishan''s case (supra), respectively. Accordingly, following the reasons mentioned in both the aforesaid judgments (supra), the respondents-department are directed to make the payment of due amount alongwith interest @ 9% per annum to the petitioner from the date when the amount became due till the date of actual payment. The needful shall be done within two months from the date of receipt of certified copy of this order. However, if the needful is not done within the stipulated period, the petitioner would be entitled for interest on the delayed payment @ 12% per annum.

10. Disposed of in the aforementioned terms.

11. No order as to costs.

