(2019) 12 P&H CK 0126

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 26655 Of 2017

Jagir Singh — APPELLANT

Vs

Punjab State Power Corporation Limited And Others — RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Citation : (2019) 12 P&H CK 0126

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Himanshu Chhabra, Jaideep Verma, G.K. Mann

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

1. The grievance, which is being raised by the petitioner in the present writ petition is that the respondents have recovered a sum of Rs. 1,55,673/- from the retiral benefits of the petitioner and the claim of the petitioner in this writ petition is for the refund of the same, which claim has been rejected by the respondents vide order dated 07.11.2017 (Annexure P-6). Further prayer of the petitioner is for issuing a direction to the respondents to release the amount of Rs. 1,55,673/- alongwith interest.

2. The facts as stated in the writ petition are that petitioner was appointed as unskilled worker on 01.04.1980 and thereafter, he was promoted as skilled worker and thereafter, as Electrician Grade-II and finally as Electrician Grade-I, from which post petitioner ultimately retired on 31.08.2016 on attaining the age of superannuation. After the retirement of the petitioner, respondents released his pensionary benefits and from the pensionary benefits, respondents recovered a sum of Rs. 1,55,673/-, which was deducted from the leave encashment of the petitioner. As Rs. 1,55,673/-was deducted from the retiral benefits of the petitioner, the said action was challenged by the petitioner by filing CWP No. 14958 of 2017, which was disposed of by this Court on 13.07.2017 by giving

direction to the respondents to decide the legal notice dated 19.05.2017 submitted by the petitioner within a period of 3 months.

3. In pursuance to the order dated 13.07.2017 passed by this Court in CWP No. 14958 of 2017, respondents have considered and rejected the claim of the petitioner for refund of Rs. 1,55,673/-. The said order dated 7. 11.2017 (Annexure P-6) passed by the respondents is under challenge in the present writ petition.

4. Upon notice of motion, respondents have filed the reply. In the reply, the respondents have defended their action of recovering the amount from the retiral benefits of the petitioner by stating that the benefit of a promotional increment was wrongly extended to the petitioner in the year 1997 and the said promotional increment was withdrawn in the month of June, 2016 i.e. when the petitioner was about to retire and the amount of Rs. 1,55,673/- has been recovered, which was excess payment made to the petitioner after the pay of the petitioner was re-fixed and the same has been recovered from the leave encashment of the petitioner.

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

6. It is an admitted fact that the benefit which was granted to the petitioner in the year 1997 i.e. grant of one promotional increment was withdrawn from the petitioner in June, 2016, when the petitioner was about to retire on 31.08.2016. On the basis of withdrawal of the promotional increment, the recovery of the excess payment has been done from the pensionary benefits of the petitioner i.e. from the leave encashment. Hon'ble Supreme Court of India has laid down the guidelines as to under what circumstances, the recovery cannot be effected from an employee. In State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195, guidelines have been given in para 12, which are 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."

7. A bare perusal of above would show that as per Clause (ii) of paragraph 12, recovery cannot be effected from an employee, who has retired or is nearing retirement i.e. has one year to go before he/she superannuates. Further, as per Clause (iii) of paragraph 12, recovery cannot be done after withdrawing an order, which remained in operation for a period of more than 5 years.

8. In the present case, the claim of the petitioner that the recovery could not have been done from the retiral benefits, is squarely covered by Clause (ii) and (iii) of para 12 of Rafiq Masih's case (Supra). Petitioner was about to retire when his pay was re-fixed in June, 2016 as only 2 months had left before he was to superannuate. Further, the order which was passed in the year 1997 granting the benefit of one promotional increment, was withdrawn in the year 2016 and the salary of the petitioner was re-fixed. The order due to which the excess amount was paid, remained in operation for more than a period of 5 years and, therefore, even as per Clause (iii) of paragraph 12 of Rafiq Masih's case (supra), recovery could not have been effected from the petitioner.

9. Learned counsel for the respondents has not been able to show any fact, which entitles the respondents to effect the recovery from the petitioner keeping in view the settled principle of law as settled in Rafiq Masih's case (supra). Rather, learned counsel for the respondents at the time of argument concedes that the claim of the petitioner is covered by the judgement in Rafiq Masih's case (Supra) in respect of the recovery, which has been done from the petitioner.

10. Keeping in view the above, the impugned order of recovery dated 07.11.2017 (Annexure P-6) is set-aside. Respondents are directed to refund the amount of Rs. 1,55,673/- to the petitioner within a period of 2 months from the date of receipt of certified copy of this order.

Writ petition is allowed in above terms.

