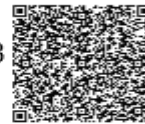




2024:PHHC:065098



CWP-2967-2015

-1-

210

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-2967-2015

Date of Decision: 07.05.2024

Om Parkash Malik

..... Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shivam Malik, Advocate,
for the petitioner.

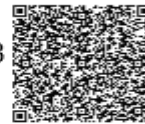
Mr. J.S. Bedi, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 21.01.2009 (Annexure P-5) passed by respondent No.2 only to the extent by which the 2nd ACP Scale granted to the petitioner w.e.f. 01.01.1996 has been directed to be withdrawn with a further prayer for quashing action of respondent No.4 by which pay of the petitioner has been re-fixed after withdrawing the benefit of 1st higher standard pay-scale and 2nd ACP scale and also for quashing the impugned recovery of Rs.1,94,572/- from retiral benefits of the petitioner and further for quashing the action of the respondents of releasing the amount of



2024:PHHC:065098

**CWP-2967-2015****-2-**

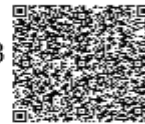
Gratuity and Commutation of Pension after a delay of more than four years and that too without any interest and commutation of pension which was short by Rs.12,871/- with a further prayer in the nature of *mandamus* directing the respondents to restore the pay of the petitioner after restoration of the benefit of 1st and 2nd ACP scale with all consequential benefits and thereafter, to grant 3rd ACP to the petitioner w.e.f. 01.01.2006 with all consequential benefits along with interest.

2. At the outset, learned counsel for the petitioner has specifically stated on instructions from the petitioner that he does not wish to press his prayer with regard to grant of 3rd ACP.

3. Learned counsel for the petitioner while giving facts of the case submitted that the petitioner was appointed to the post of Lower Division Clerk (LDC) and retired on 30.09.2010. At the time when he was in service, he was granted 1st higher standard pay-scale vide Annexure P-1 w.e.f. 01.01.1994 and thereafter, vide Annexure P-3, on 20.12.2004, 2nd ACP was granted to the petitioner w.e.f. 01.01.1996. Thereafter, he was promoted to the post of Commercial Assistant on 27.05.2008, but on the same date, he had forgone his promotion. Learned counsel further submitted that vide Annexure P-5, on 21.01.2009, the request of the petitioner to forgo his promotion as Commercial Assistant was accepted but with a rider which was contained in Clause-4 that the DDO may be asked to take action regarding the drawing of ACP scale. He also submitted that once the petitioner has already been granted the benefit of ACP when he was working on the post of



2024:PHHC:065098



CWP-2967-2015

-3-

UDC in accordance with Rules and Regulations, then the mere fact that thereafter, he was promoted and he had forgone his promotion which was even accepted by the respondents, the benefit already granted to him could not have been withdrawn nor any recovery could have been effected from him. He further submitted that the law in this regard has already been settled by a Co-ordinate Bench of this Court in ***CWP-9755-2009*** titled as “***Vijay Singh Vs. State of Haryana and others***”, decided on 25.11.2010 (Annexure P-10) and submitted that even the ACP Rules were also considered by the Co-ordinate Bench of this Court especially Rule 11 of Haryana Civil Services (Assured Career Progression) Rules, 1998. While referring to the ACP Rules which have been attached with the present petition as Annexure P-2, he submitted that although there is a provision under Rule 11 of the Haryana Civil Services (Assured Career Progression) Rules, 1998 for ceasing of entitlement of ACP Scale in the event of forgoing of promotion but the same has been so considered by a Co-ordinate Bench of this Court in the aforesaid judgment vide Annexure P-10 and it was held by relying upon the earlier judgment that once the benefit of ACP has been granted then the mere fact that an employee had forgone the promotion cannot become a ground for denial of the aforesaid benefit already granted. He also submitted that his case is squarely covered by the aforesaid judgment vide Annexure P-10.

4. Learned counsel for the petitioner further submitted that even otherwise also, the case of the petitioner is squarely covered by a judgment



2024:PHHC:065098



CWP-2967-2015

-4-

of Hon'ble Supreme Court in "*State of Punjab and others Vs. Rafiq Masih (White Washer) and others*", 2015(4) SCC 334 as well. While substantiating his arguments, he submitted that the aforesaid benefit was granted to the petitioner while he was in service and thereafter, when he retired on 30.09.2010, then after his retirement an amount of Rs.1,38,062/- was recovered from his Gratuity and Rs.56,510/- from arrears of his pension on the account of the aforesaid Clause-4 of Annexure P-5 by which an order was passed pertaining to the recovery after taking away the grant of ACP which could not have been done. He submitted that even otherwise also the recovery could not have been effected after the retirement of the petitioner especially in view of the fact that he falls in Class 'C' category and so far as the recovery aspect is concerned, his case is squarely covered by the aforesaid judgment of Hon'ble Supreme Court.

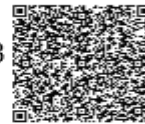
5. On the other hand, Mr. J.S. Bedi, learned counsel for the respondents-Nigam has placed reliance upon Rule 11 of the Haryana Civil Services (Assured Career Progression) Rules, 1998 vide Annexure P-2 and submitted that in view of the aforesaid Rule the benefit was to be withdrawn from the petitioner. With regard to the recovery from the petitioner after his retirement is concerned, he has not disputed that the case of the petitioner is covered by the aforesaid judgment in *Rafiq Masih's case (Supra)*.

6. I have heard the learned counsels for the parties.

7. There are two disputes involved in the present case. Firstly, as to whether after the retirement of the petitioner, any recovery could have



2024:PHHC:065098



CWP-2967-2015

-5-

been effected from the petitioner of an amount which was granted to him in the form of ACP when he was in service. The law in this regard is no longer *res integra*. Hon'ble Supreme Court in **Rafiq Masih's case (Supra)** has laid down law in this regard and the relevant portion of the judgment is reproduced as under:-

“18. 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.



2024:PHHC:065098

**CWP-2967-2015****-6-**

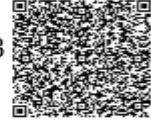
(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

8. The grievance of the petitioner is that no recovery could be effected after his retirement is squarely covered in his favour in view of the Clause (i) & (iii) of the aforesaid judgment and therefore, this Court is of the view that no amount could have been recovered after his retirement.

9. So far as the second dispute in the present case that as to whether the respondents could have by virtue of Clause-4 of impugned order (Annexure P-5) withdrawn the benefit of ACP already granted to him only on the ground that he had forgone his promotion is concerned, the law in this regard has also been settled by a Co-ordinate Bench of this Court vide Annexure P-10. Rule 11 of the Haryana Civil Services (Assured Career Progression) Rules, 1998 which has been so referred to by the learned counsel for the respondents-Nigam has also been considered in the aforesaid judgment and it was held that the Rule cannot be interpreted in the manner so as to deprive the employee of the aforesaid benefit. This Court is of the view that the case of the petitioner is squarely covered by the aforesaid judgment of a Co-ordinate Bench of this Court vide Annexure P-10 and therefore, no such Clause could have been inserted in the impugned order (Annexure P-5) and consequent upon the same, the benefit already given to



2024:PHHC:065098

**CWP-2967-2015****-7-**

the petitioner could not have been withdrawn by virtue of Rule 11 as aforesaid.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents are directed to refund the amount which was recovered from the Gratuity of the petitioner within a period of four months from today along with interest @ 6% per annum (simple) which is to be calculated from two months after the date of retirement of the petitioner till the date of actual disbursement to him.

11. In case, the aforesaid amount is not paid to the petitioner within a period of four months from today, then the petitioner shall be entitled to future interest @ 9% per annum (simple) instead of 6% per annum (simple).

12. The impugned order dated 21.01.2009 (Annexure P-5) to a limited extent of Clause-4 is hereby set aside. The respondents are directed to recalculate and refix the pension and pensionary benefits of the petitioner and pay him arrears along with interest @ 6% per annum (simple) within the aforesaid period of four months from today. However, there shall be no order as to costs.

07.05.2024*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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