

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.1342 of 1995
Date of decision:07.01.2015**

The Kurukshetra University, Non Teaching Employees Association, through
its General Secretary.

...Petitioner

Versus

The Kurukshetra University, Kurukshetra and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Pritam Saini, Advocate for the petitioner.

Mr.Tarun Singla, Advocate for
Mr.Ashok Aggarwal, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

The present writ petition is directed against the communication dated 11.11.1994 (Annexure P-4), whereby respondent-University sought recovery of the alleged excess payment made to the members of the petitioner-association on account of their Leave Travel Concession ('LTC' for short).

Notice of motion was issued and pursuant thereto, reply on behalf of respondent-University was filed. A Division Bench of this Court passed the following order on 31.7.1995.

“Learned counsel for the State and the University shall have appropriate instructions to right off the small debt of the Class IV employee on the basis of equity particularly when they had gone to religious places.”

Learned counsel for the petitioner submits that there was no allegation of misrepresentation or concealment against the members of the petitioner-association to the effect that at the time of claiming the payment on account of LTC, they either concealed any fact from the respondent authorities or misrepresented their case for claiming the alleged excess payment. He further submits that the members of the petitioner-association hired a chartered bus of Haryana Tourism Corporation and they were very much entitled for reimbursement of that amount, in view of the government policy decision dated 11.7.1985. He further submits that most of the members of the petitioner-association have already retired from service or are on the verge of retirement. He places reliance on a Full Bench judgment of this Court in **Budh Ram and others v. State of Haryana and others, 2009 (3) SCT 333** and the judgment dated 18.12.2014 passed by the Hon'ble Supreme Court in **Civil Appeal No. 11527 of 2014 [State of Punjab and others v. Rafiq Masih (White Washer) etc.]**. He prays for setting aside the impugned action of the respondent-University for recovering the alleged excess payment made to the petitioners, by allowing the present writ petition.

Per contra, learned counsel for the respondent-University submits that admittedly the members of the petitioner-association have received excess payment. He further submits that the members of the petitioner-association were not entitled for the amount received by them. As per the stand taken by the respondent-University in its written statement, learned counsel for the respondent-University submits that the payment was made to the members of the petitioner-association under a bona fide wrong impression, misinterpreting the policy decision of the State Government on

the subject. However, learned counsel for the respondent-University fairly concedes that there was no allegation against the members of the petitioner-association about any concealment or misrepresentation for the purpose of claiming alleged excess payment on account of LTC. He further submits that since the members of the petitioner-association have actually received the excess payment, the respondent-University had every right to recover the same. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, the instant writ petitions deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that there was no allegation levelled by the respondent-University against any of the members of the petitioner-association that they have either concealed any material fact or misrepresented their case for the purpose of claiming alleged excess payment on account of LTC. On the other hand, it is the own pleaded case of the respondent-University, that the alleged excess payment was made to the members of the petitioner-association because of bonafide wrong impression. In such a situation, the respondents cannot be permitted to draw any benefit out of their own wrong, particularly when the most of the members of the petitioner-association were low paid employees and have already retired from service or are on the verge of retirement.

The relevant policy decision of the Haryana Government reproduced in para 12 of the writ petition, reads as under:-

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i) *That the relevant extract of the instructions issued by the Chief Secretary to Haryana Government dated 16.11.1987, under which the L.T.C was granted to the employees/members of the Association is reproduced here as under:-*

“No.13/10/85-SII

From:

The Chief Secretary to Government, Haryana.

To

i) All Heads of Departments, Commissioners, Ambala and Hissar Divisions. All Deputy Commissioners and Sub Divisional Officers (Civil) in Haryana.

ii) Registrar, Punjab and Haryana High Court and all District & Sessions Judges in Haryana.

Dated, Chandigarh, the 16th November, 1987.

Subject: Grant of Leave Travel Concession for visiting Home Town and Any place in India to the State Government employees.

Sir,

I am directed to refer to the composite Punjab Government letter No.2892-Gi 57/6838 dated 26/28th May, 1957, and subsequent instructions issued on the subject from time to time and Haryana Government circular letter No.13/8/84-Sii dated the 31st December, 1984, regarding the subject noted above and to say that the central government have further liberalized the existing policy of leave travel concession vide their letter No.31011/2/84-Estt.(A) dated the 11th July, 1985 (Copy enclosed for ready reference). After careful consideration of the whole matter, the State Government has taken the following decisions:-

(b) “According to existing policy instructions of the State Government, reimbursement of the expenditure

is made only if the journeys are performed by rail or by buses of Haryana Transport Deptt., Haryana, Tourism Deptt. or of Haryana Tourism Corporation and as a result of this, the State Government Employees availing of Leave Travel Concession cannot get reimbursement of such expenditure where rail journey is not available and the buses of the Haryana Govt./Tourism Deptt./Tourism Corporation do not go to such places.

The State Government has now decided that reimbursement of the expenditure will also be made if the journeys are performed by buses, vans or other vehicles on charter, where these vehicles are operated by Tourism Corp. in the Public Sector State Govt. Transport Corporation and Transport Services run by other State Govt. or Local Bodies.

When a Government servant undertakes a journey in a chartered bus under LTC scheme, the reimbursement may be either the actual hire charges on the chartered bus or the amount reimbursement had the journey to the declared place of visit been undertaken by the entitled class by rail by the shortest route, whichever is less.”

The above-said factual aspect of the matter qua the policy decision, has not been denied by the respondent-University in its corresponding paragraph No. 12 (i) of the written statement. In this view of the matter, it can be safely concluded that at the most, it was a case of misinterpretation of the policy decision at the hands of the concerned official/officer(s) of the respondent-University, who made the alleged excess payment in favour of the members of the petitioner-association. The members of the petitioner-association were not at fault in this regard at any point of time.

It is also not in dispute that the members of the petitioner-

association hired a chartered bus of Haryana Tourism Corporation and actual payment of fare was made to the members of the petitioner-association, on the basis of receipt issued by the Tourism Department of Haryana Government, as stated by the respondent-University itself in preliminary objection of its written statement. Having said that, this Court feels no hesitation to conclude that the respondent-University was not entitled to recover the excess amount paid to the members of the petitioner-association, because there was no allegation of misrepresentation or concealment against the members of the petitioner-association.

The above-said view taken by this Court also finds support from the Full Bench judgment of this Court in **Budh Ram's case (supra)** . Somewhat similar controversy fell for consideration before the Hon'ble Supreme Court in a recent judgment, whereby a large number of petitions were decided together on 18.12.2004 in **Rafiq Masih's case (supra)**. It deserves to be noted that although the above-said judgments rendered by the Full Bench of this Court as well as the Hon'ble Supreme Court were against the recovery orders passed by the State authorities, so as to recover the allegedly excess payment made to the employees on account of their revised pay-scale or increments etc, yet the ratio thereof would be applicable in the present case as well because of its peculiar fact situation.

The Hon'ble Supreme Court in its judgment dated 18.12.2014 in **Rafiq Masih's case (supra)** laid down the following broad guidelines, whereby recoveries by the employers, would be impermissible in law:-

“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, summarize 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.”*

Reverting back to the facts of the present case in hand and respectfully following the law laid down by the Full Bench of this Court as well as by the Hon'ble Supreme Court in the cases, referred to hereinabove, it is unhesitatingly held that the action of the respondent-University to seek recovery of alleged excess payment from the members of the petitioner-association on account of their LTC claim was patently illegal. It is so said because the respondent-University itself was at fault, if at all and the respondents cannot be permitted to draw any benefit out of their own wrong, particularly when there was no allegation against the members of the petitioner-association about any concealment or misrepresentation for claiming the benefit of alleged excess payment on account of LTC.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the action of the respondent-University has been found to be patently illegal, the impugned communication dated 11.11.1994 (Annexure P-4). It is made clear that if some amount had already been recovered by the respondent-University from any member of the petitioner-association that will not be paid back to the members of the petitioner-association. However, no further amount shall be recovered from any member of the petitioner-association.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands allowed, however, with no order as to costs.

07.01.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE