

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

**1. CWP- 8016-1995 (O&M)
Date of Decision : 01.07.2015**

Dr.Surinder Kumar & others

..... Petitioners

versus

The State of Haryana & others

..... Respondents

2. CWP- 4194-1992(O&M)

Shri Raj Pal Setia & others

..... Petitioners

versus

The State of Haryana & another

..... Respondents

3. CWP- 12001-1995(O&M)

Sawantantra Poursh Bose (died) through LRs

..... Petitioners

versus

The State of Haryana & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. C.S.Singh, Advocate
for the petitioner/s in CWP No.8016-1995.

Mr. Tarun Singla, Advocate for
Mr. Ashok Aggarwal, Advocate
for the petitioner/s in CWP No.4194-1992.

Mr. Mani Ram Verma, Advocate
for the petitioner in CWP No.12001-1995.

Ms. Shruti Goyal, AAG, Haryana.

Mr. Dhawal Bhandari, Advocate
for respondent No.3 in CWP No.12001-1995.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (ORAL)

Since common questions of law and fact are involved in these three petitions, they are being decided by this common order.

By these petitions the petitioners have challenged the action of the respondents in issuing notification dated 16.05.1990 whereby the earlier notification dated 02.06.1989 was modified and the benefit of selection grade was limited to only 20% of the cadre.

Learned Assistant Advocate General states that the matter is covered by the decision of the Hon'ble Supreme Court in Civil Appeal No.6585 of 2000 titled as "***State of Haryana and others Vs. Ishwar Singh & others decided on 20.11.2000***" upholding the action of the Government. Learned counsel for the petitioners have not been able to dispute this fact.

In the circumstances, the claim of the petitioners have to be rejected.

Learned Assistant Advocate General has however pointed out that as regards the recoveries, if any to be made from any of the employees, the Government had issued notification No.10/29/90-3PR

(FD) dated 5th November, 2001 and even in the present cases the recovery would be made as per that notification, wherein it was held as follows :-

“4. Keeping in view the above judgments, the Government has considered the matter and decided as under: -

*(i) The amount, if **actually paid** (emphasis added) to the petitioners on account of order dated 2.6.89 but before issuance of order dated 16.5.90, shall not be recovered. It is clarified here that if the amount for the period 2.6.89 to 16.5.90 has been actually paid subsequent to 16.5.90, the same would be recoverable.*

(ii) For the purposes of recovery of the amount paid in excess of what was due to them in accordance with the instructions dated 16.5.90, it has been decided to treat these cases in four different groups on grounds of equity:-

(a) Those who are in service;

(b) Those who have retired and are in receipt of pension;

(c) Those who have retired and died but family pension is being paid to one of the dependents/heirs; and

(d) Those who may have died and also there is no recipient of family pension.

(iii) The mode and method of recovery in respect of the each of the groups mentioned above has been decided to be made as under:-

(a) Those who are in service:

The amount paid in excess of what was due to them in accordance with the instructions of 16.5.90 may be recovered in 36 monthly installments starting from their salary starting from the month of November, 2001.

(b) Those who have retired and are in receipt of pension:

Keeping in view that they are in receipt of pensions, recoveries may be made from this group of employees in 48 monthly installments starting from the pension from the month of November, 2001.

(c) Those who have retired and died but family pension is being paid to one of the dependents/heirs:

In the cases where the petitioners/officers may have died but family pension is being paid, though there would be no justification for waiving off the recoveries as the family pension is still being paid to such dependents/heirs by the Government, yet the Government, out of special consideration for those in receipt of family pensions and in deference to the observations of the Hon'ble High Court, has decided to waive off the recoveries in these cases.

(d) Cases where the petitioners/officers may have died and there is no recipient of family pension among the legal heirs:

It has been decided to waive off the amount recoverable in these cases as it may cause acute hardship for the legal heirs of the deceased who are not receiving any pension/family pension on account of the deceased."

Another claim in CWP bearing No.12001 of 1995 is that the salary of the original petitioner was stopped w.e.f. August, 1994. In reply it has been mentioned that salary was stopped because of some uncleared advances.

Be that as it may, the respondents are directed to clear the salary due to the original petitioner in the lower pay scale after deducting whatever is due to him on account of advance.

No other argument has been raised by the learned counsel for the petitioners.

In the circumstances, the petitions bearing CWP Nos.8016 of 1995 and CWP No.4194 of 1992 are dismissed and CWP No.12001 of 1995 is disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

01.07.2015

Pooja Sharma-I

(AJAY TEWARI)
JUDGE