HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.18003 of 2011
Date of decision:12.01.2015

Raghubir Singh and others

...Petitioners

Versus

Haryana Agro Industries Corporation Ltd and others

...Respondents

CWP No.16028 of 2011

Kundan Singh and another

...Petitioners

Versus

Haryana Agro Industries Corporation Ltd and others

...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.Lalit Sharma, Advocate for the petitioners.

Mr.Pankaj Gupta, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

These two writ petitions are directed against the orders of recovery issued by the respondent authorities to recover the alleged excess payment made to the petitioners on account of alleged wrong fixation of their salary, granting the benefit of 3rd ACP.

Notice of motion was issued and pursuant thereto, written statement was filed on behalf of the respondents.

Learned counsel for the petitioners in both the writ petitions submits that it is not even the allegation against any of the petitioners that they misrepresented their case at any point of time, for the purpose of claiming the benefit of 3rd ACP and subsequent fixation of their pay. He further submits that once the petitioners were not at fault in this regard, recovery could not have been ordered against the petitioners. So far as the rectification of the alleged bonafide mistake on the part of respondent authorities is concerned, learned counsel for the petitioners fairly states that he has got no objection to the extent of rectification of bonafide mistake but the employer would have no right to effect recovery from the petitioners, particularly when the petitioners were Class-IV employees. He prays for allowing both the writ petitions.

On the other hand, learned counsel for the respondents submits that it was public money, which was paid in excess to the petitioners under bonafide wrong impression and the respondent authorities have every right to effect recovery of the excess payment made to the petitioners, for which the petitioners were not entitled. He also submits that at the time of fixation of pay, petitioners furnished undertakings to the effect that in case excess payment, if any, made to them on account of wrong fixation of salary, the same will be refunded. Further, he places reliance on two judgments of the Hon'ble Supreme Court in **Chandi Prasad Uniyal and others v. State of Uttrakhand and others, (2012) 8 SCC 417** and **U.T. Chandigarh and others v. Gurcharan Singh and another, 2014 (1) SCT 512**, to contend that since the petitioners were not entitled to receive the excess payment, there was no illegality in the impugned orders and the said excess amount was liable to be refunded by the petitioners to the respondent authorities. He prays for dismissal of both the writ petitions.

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 view of the given fact situation of the cases in hand, both these writ petitions deserve 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 against the petitioners, at the hands of the respondent authorities, that the petitioners have misrepresented their case for claiming the alleged excess payment pursuant to the benefit of 3^{rd} ACP. In such a situation, the respondent-employer could only rectify its alleged bonafide mistake and would have no right to effect recovery from the employees like the petitioners who have not been at fault at any point of time. This is what has been ruled by the Hon'ble Supreme Court in **Civil Appeal No. 11527 of 2014 [State of Punjab and others v. Rafiq Masih (White Washer) etc.].**

After discussing all the earlier relevant judgments on the subject, the Hon'ble Supreme Court recorded its conclusion in para 12 of the judgment in **Rafiq Masih's case (supra)** and the same reads as under:-

> *"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:*
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> *(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."

In view of the above, the judgments relied upon by the learned counsel for the respondents are of no help to the respondents. Once the respondents were not entitled to recover the amount from the petitioners, the alleged undertaking submitted by the petitioners would be of no consequence. Further, if any amount has been refunded by the petitioners because of passing of the impugned orders, that will also be totally insignificant. It is so said, because any such exercise would be contrary to the law laid down by the Hon'ble Supreme Court in **Rafiq Masih's case (supra)**.

Once the respondent authorities have no right to effect recovery of amount allegedly paid in excess to the petitioners, the recovery could not have been ordered against the petitioners. Having said that, this Court feels no hesitation to conclude that even if some amount has been refunded by the petitioners, the respondent authorities would be under legal obligation to pay the same back to the petitioners, in view of the law laid down by the

Hon'ble Supreme Court.

During the course of hearing, when a pointed question was put to the learned counsel for the respondents as to what was the desperate urgency in fixing the pay of the petitioners wrongly with an undertaking sought from the petitioners, as referred in the written statement, he had no answer and rightly so, because it was a matter of record. It also does not appeal to reason as to why the respondent authorities could not apply their mind properly, before fixing the pay of the petitioners incorrectly in haste with an undertaking from the petitioners, that in case any excess payment on account of wrong fixation of pay, they would be bound to refund the same. Neither there was any such occasion to do so, nor it was a matter of pressing urgency. This futile exercise was very much avoidable.

In such kind of process, which is totally unwarranted on the face of it, public time and money is wasted. Ultimately nobody is going to gain and sufferer would be the State Exchequer. Further, the concerned official(s) would always be protected by the higher authorities under the pretext of human error. In the present case also, there is not even a passing reference in the written statement that any explanation was sought from any erring officer/official(s) of the Department, who committed these prima facie mistakes, while fixing the salary of the petitioners incorrectly.

Until and unless the employer starts fixing liability of the wrong doers, this kind of mistakes would continue. Invariably, the officials of the department, while fixing the pay of the employees, proceed on such casual approach under the impression that if ultimately the mistake is detected, nobody is going to harm them and they would not be facing any action for their mistake, not even an explanation. Further, the possibility of connivance between the officer/official(s) of the department and beneficiary employee cannot be ruled out.

Under these circumstances, it can be safely concluded that the concerned officer/official(s) of the department, must be held liable for the alleged wrong fixation of salary, particularly when the mistake is apparent on the face of it and many a time, the same cannot be claimed to be a bonafide mistake as well. Let responsibility be fixed and negligent official(s) be awarded a recordable warning to be more careful in future. This will not only save public money and time but will also avoid unwarranted and huge amount of litigation in the courts which are already overburdened. It is so said because altogether ignoring serious mistakes committed by the officials, while fixing the salary of the employees, would amount to granting premium to the wrong doers, which would further encourage them in continuing doing so with immunity, at the cost of public time and money.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Rafiq Masih's case (supra)**, it is unhesitatingly held that the respondent authorities have no right to effect recovery from the petitioners, because the petitioners were admittedly not at fault at any point of time. It is also undisputed on record that the petitioners were Class-IV employees and would be squarely covered under the very first clause of para 12 of the judgment of the Hon'ble Supreme Court, reproduced above.

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 the impugned orders passed by the respondent authorities are patently illegal and the same are hereby set aside.

Consequently, it is held that the respondent authorities would have no right in law, to recover any amount from the petitioners. If any amount has been refunded by the petitioners, the same shall be paid back to them by the respondent authorities within a period of two months from the date of receipt of a certified copy of this order.

Resultantly, with the above-said observations made and directions issued, both these writ petitions stand allowed, however, with no order as to costs.

12.01.2015 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**