

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

CWP No. 7544 of 2014 (O&M)

Date of decision: 10.03.2015

Surinder Kumar Khatri

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. J.P. Sharma, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the impugned order dated 25.03.2014 (Annexure P-5), whereby the 2nd ACP granted to the petitioner was sought to be withdrawn and direction to the respondents to release the amount of leave encashment.

2. It is contended that the petitioner joined the office of respondent No.2 on 02.03.1979 on adhoc basis and his services were regularized w.e.f. 15.09.1982. The petitioner was granted ACP w.e.f. 01.05.2010, on the implementation of Haryana Civil Services (Revised Pay) Rules, 2008, vide order dated 28.07.2010. It is further

contended that one Dilbagh Singh, who belongs to the reserve category and was junior to the petitioner in the feeder cadre, had been granted 1st ACP w.e.f. 01.01.2006 and 2nd ACP w.e.f. 01.09.2008. The petitioner served a notice/representation to respondent No.2 to amend the order dated 28.03.2012 and to grant him ACP w.e.f. 01.01.2006. The petitioner was also granted the benefit w.e.f. 01.01.2006 but just a week prior to his retirement, respondent No.2 issued a notice to the petitioner by amending the order dated 28.03.2012, withholding the amount of leave encashment with a view to recover the amount given to the petitioner under ACP scheme.

3. On the other hand, the learned State counsel submits that the petitioner was given the benefit of ACP on 01.01.2006 (notionally) and actually from his completing 10 years service w.e.f. 01.05.2010. The benefit released in favour of the petitioner is based on the Govt. instructions issued from time to time. Thus, the claim of the petitioner for actual benefit instead of notional is not covered under the Govt. instructions dated 05.03.2009.

4. In State of Punjab and others Vs. Rafiq Masih, rendered in *Civil Appeal No. 11527 of 2014*, the Hon'ble Apex Court has held 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.

In the present case, the petitioner retired on 31.01.2014 and the impugned order was passed on 25.03.2014, after the retirement of the petitioner. The amount if paid in excess, is not on account of any lapse on the part of the petitioner; it is the department erred in granting him such a payment.

Therefore, keeping in view the above, the instant petition is allowed. The impugned order dated 07.03.2014/25.03.2014 (Annexure P-5) is set aside. The respondents are directed to release the amount of leave encashment and other pensionary benefits, which are withheld, within a period of three months from the date of receipt of a certified copy of this order.

Disposed of.

10.03.2015

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(JITENDRA CHAUHAN)
JUDGE