

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 9561 of 2013 (O&M)

Date of Decision: 06.02.2015.

Meena

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. J.S. Berwal, Advocate for the petitioner.

Mr. Ravi Pratap Singh, A.A.G., Haryana.

TEJINDER SINGH DHINDSA.J

The petitioner, who is serving as a Hindi Teacher under the Haryana State Education Department, has filed the instant writ petition impugning the show cause notice dated 5.2.2013 at Annexure P-9 in terms of which the benefit of contractual service rendered by the petitioner i.e. from 17.4.1998 to 29.5.2001 was sought to be withdrawn. Further challenge is to the order dated 27.4.2013 (Annexure P-14), whereby a recovery of Rs.1,65,770/- was directed on the basis of wrong fixation of pay.

Having heard learned counsel for the parties at length and having perused the pleadings on record, I am of the considered view that the instant writ petition deserves to succeed.

It has gone uncontroverted that in response to the impugned show cause notice dated 5.2.2013 (Annexure P-9) the petitioner had submitted a detailed reply dated 5.3.2013 at Annexure P-11.

Learned State counsel would concede that after submission of the reply no specific order was passed in terms of which the pay of the

petitioner may have been re-fixed at a lower stage. As such, without there being a specific order having been passed regarding re-fixation of pay at a lower stage, an order directing recovery cannot sustain.

That apart, the issue with regard to the right of an employer to recover monetary benefits that already stood released to an employee in excess of entitlement, came up for consideration before the Hon'ble Supreme Court in a recent judgement in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc. (Civil Appeal No.11527 of 2014 arising out of S.L.P. (Civil) No.11684 of 2012 decided on 18.12.2014)**. The Hon'ble Apex Court having considered all the previous judicial precedents on the subject had culled out certain situations and relating to which it was held that recoveries would be impermissible in law. It would be apposite to refer to para 12 of the judgement rendered in **Rafiq Masih's** case (supra) and is reproduced hereunder for facility of ready reference:-

“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.

(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."

The dictum laid down is clear i.e. No recovery would be admissible from employees belonging to Class-III and Class-IV service or Group-C and Group-D service. Still further, recovery from employees when the excess payment has been made for a period in excess of 5 years before the order of recovery is issued, has also been held to be impermissible.

Concededly, the petitioner is holding a Group C post in the capacity of Hindi Teacher under the Haryana State Education Department. That apart, perusal of the impugned show cause notice dated 5.2.2013 at Annexure P-9 would in itself clarify that the monetary benefit recovery of which has now been directed, has been made over to the petitioner for a period much in excess of 5 years. As such, without even going into the question of the entitlement of the petitioner to financial benefit sought to be recovered on merits, the action of recovering the same cannot be sustained as it would be in clear violation of the judgement rendered by the Hon'ble Supreme Court in **Rafiq Masih's** case (supra).

For the reasons recorded above, the writ petition is allowed. The impugned show cause notice dated 5.2.2013 as also the consequential order dated 27.4.2013 at Annexure P-14, are quashed.

Writ petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

February 06, 2015.