IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.554 of 2015(O&M)

Haryana Agro Industries Corporation
Limited and others ... Appellants

versus

Kundan Singh and another ... Respondents

and

LPA No.561 of 2015(O&M)

Haryana Agro Industries Corporation
Limited and others ... Appellants

versus

Raghubir Singh and others ... Respondents

Date of Decision: April 10, 2015

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLEMR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Pankaj Gupta, Advocate for the appellants.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of two LPAs bearing Nos.554 and 561 of 2015 as the same involve common question for adjudication. The facts are being taken from LPA No.554 of 2015 for deciding the issue.

This intra Court appeal under Clause X of the Letters Patent has been filed against the order dated 12.01.2015 of the learned Single Judge whereby, the petition

(CWP No.16028 of 2011), filed by the respondents challenging the order of the appellant dated 05.08.2011 directing recovery of the excess payment made to the respondents on account of alleged wrong fixation of their salary by granting them the benefit of 3rd ACP Scheme, has been allowed.

The respondents are working as Peons in the appellant-Corporation. Respondent No,1 joined service in the year 1972. Respondent No. 2 joined service in 1978. Ever since their entry in service they have been working as Peons and have not being given any promotion.

Vide orders dated 14.05.2010 and 10.05.2010 (Annexures P-1 and P-2), the pay of the respondents was fixed in the 3rd ACP Pay Band by giving them the benefit of ACP pay structure. Subsequently, it was realized that there was some mistake in the pay so fixed and vide order dated 05.08.2011 (Annexure P-3), the pay of the respondents earlier fixed vide orders dated 14.05.2010 and 10.05.2010 was rectified and recovery of excess amount paid to them prior to rectification of pay was directed to be made.

The respondents challenged the aforesaid action by filing Writ Petition, which was allowed.

In the writ petition, it was the contention of the respondents that they were not at fault and that at no point of time they had made any misrepresentation and consequently, no recovery could be ordered against them, particularly, as they are class-IV employees. They, however, did not question the rectification of the mistake on the part of the appellant. The appellant had contended that as public money had wrongly been paid in excess of their entitlement, hence the recovery was rightly ordered. The appellant had relied on decisions of Hon'ble the 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 the excess amount could be recovered. It was also contended that at the time of re-fixation of their pay, the respondents had furnished undertakings that in case any excess payment is made to them on account of wrong fixation of salary, the same would be refunded.

Learned Single Judge taking note of the fact that there were no allegations against the respondents that they had at any stage made any misrepresentation for claiming excess payment, held that recovery could not be effected from them. It was also directed that if some amount had been refunded by the respondents, the authorities would be under legal obligation to pay back the same to them. But it was also held that the appellant could legitimately rectify the mistake in pay fixation. Accordingly, the writ petition was allowed.

Reliance was placed on the decision of Hon'ble the Supreme Court in **Civil Appeal No. 11527 of 2014 [<u>State of Punjab and others v. Rafiq Masih (White Washer) etc</u>.** and the following observations therefrom were referred to :

> "*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."

In appeal, learned counsel for the appellant has again raised the same arguments that non-effecting of recovery of money wrongly paid to the respondents would amount to unjust enrichment. He also stressed that the respondents had given a specific undertaking that if any excess amount was paid to them as a result of incorrect fixation of pay, the same would be refunded by them or adjustment could be made against future payments due to them.

Both the aforesaid arguments have been dealt with by learned Single Judge and rightly rejected. The respondents are Class IV employees. Recovery from them has been held to be specifically impermissible in law by the Hon'ble Supreme Court in the above noted case. The undertaking given by the respondents to refund cannot change the aforesaid legal position and make them liable to refund the excess payment.

Accordingly, there is no merit in the present appeals and the same are dismissed.

(SATISH KUMAR MITTAL) **(HARINDER SINGH SIDHU)**
JUDGE **JUDGE**

April 10, 2015
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