

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

CWP No. 20292 of 2002
Date of Decision: 13.6.2016

Swatantar Sen

.....Petitioner

Vs

The State of Punjab and ors

....Respondents

CORAM: - HON'BLE MS. JUSTICE RITU BAHRI

Present: - Mr. K.S. Khehar, Advocate for the petitioner.

Mr. Avinit Awasthi, AAG, Punjab

....

RITU BAHRI, J (Oral)

Petitioner seeks direction to respondents to quash the order dated 27.9.2001 (Annexure P-5), whereby the pay of the petitioner has wrongly been fixed.

The petitioner is having three years diploma in Architectural Assistantship from the State Board of Technical Education, Punjab. He joined the service in the respondent department as Junior Draftsman on 9.11.1971. Thereafter, the petitioner was promoted as Assistant Architect on 1.3.1984 as post borne on the Class-II service. Vide the notification dated 16.1.1998 (Annexure P-1), Rules regarding the revision of pay scales with effect from 1.1.1996 were issued. At that stage, the petitioner was drawing the scale of ₹ 3000-4500 and after the revision of pay scales as per Annexure P-1, he was granted revised pay scale of ₹ 10025-15100 vide the office order dated 10.2.1998 (Annexure P-2). Thereafter, vide the notification dated 19.5.1998 (Annexure P-3), the State Government issued an amendment vide which a four tier pay scale was sanctioned for various posts including

that of the post of Assistant Architect.

Annexure P-3

The Second Schedule

(See rule 3(b), (g), and rule 4)

Revised Scales of pay for common categories/posts as specified hereunder: -

Sr. No.	Name of the category/post	Existing Pay Scale (in Rupee)	Revised Pay Scale (in Rupee)	Remarks
xx	xx	xx	xx	xx
<u>ARCHIVES</u>				
1 to 4	xx	xx	xx	xx
5.	Assistant	2200-4000 3000-4500 after 8 years service 3700-5300 after 18 years service	7880-13500 entry scale (with start of 8000 10025-15100 (after 4 years of regular service in the entry scale) 12000-15500 (after 9 years of regular service in the entry scale) 14300-18150 (after 14 years of regular service in the entry scale).	

Pursuant to the notification/clarification (Annexure P-3), the petitioner was held entitled for grant of benefit of pay scale of ₹ 14300-18150 on completion of 14 years of regular service in the entry scale w.e.f. 1.3.1998 vide the impugned order dated 27.8.1998 (Annexure P-4).

A further notification was issued in respect of recommendations of 4th Punjab Pay Commission dated 17.4.2000 (Annexure P-6), in which a condition was made that only those

employees were entitled to be promoted in the higher pay scale who have requisite higher qualification for promotion in the higher pay scale. Pursuant to the said notification dated 17.4.2000 (Annexure P-6), an impugned order dated 27.9.2001 (Annexure P-5) was passed.

The present writ petition was admitted on 28.8.2003 and operation of the impugned order dated 27.9.2001 (Annexure P-5) was stayed. After going through the stand taken by respondents in the written statement, the writ petition deserves to be allowed. The only stand taken in the written statement is that as per letter dated 23.9.1998 (Annexure R-1), it is specifically stated that employees who have been already granted benefit of higher pay scale were subject to review on the basis of the clarification as may be issued and thereafter a clarification dated 20.12.1999 (Annexure R-4) was issued. The petitioner at the time of appointment was having the qualification of Architectural Assistantship. The petitioner was granted benefit of placement in the higher pay scale on 19.5.1998 and thereafter the said benefit was granted to the petitioner vide Annexure P-4 dated 27.8.1998. At the time of grant of the said benefit, the petitioner had completed 14 years of service and was not ineligible to be promoted as Architect. Even though the benefit was subject to further clarification from the Government of Punjab. The said benefit could not be withdrawn on account of the notification which was issued on 20.12.1999 (Annexure R-4).

As per Punjab Architects (Class -I) Service Rules, 1999, there were no statutory rules governing the posts borne on the Class I Service. For the posts of Architect, the method of appointment has been stipulated as 100% by promotion from amongst Assistant Architects

who possess a degree in Architecture or a Diploma in Architecture recognised as equivalent to a degree in Architecture by the Council of Architecture constituted under Section 3 of the Architect Act, 1972 and who have an experience of working as such for a minimum period of five years. Since the petitioner did not have the said degree, the impugned order was passed. Thereafter, the pay of the petitioner was refixed at a lower stage in the scale of Rs.7180-13500 w.e.f 01.01.1996 instead of the scale of Rs.10025-15100 as granted earlier (P-5/T).

However, the respondents in the written statement stated after the impugned order was passed, the petitioner was given personal hearing on 29.11.2002 and order dated 03.01.2003 was passed rejecting the representation made by the petitioner.

Petitioner was having the qualification of three years diploma in Architectural Assistantship from the State Board of Technical Education, Punjab and joined as Junior Draftsman on 9.11.1971. Thereafter, he was promoted as Assistant Architect on 01.03.1984, a post borne on the Class II Service. However, a notification was issued on 17.4.2000 (Annexure P-6), in which a condition was made that only those employees were entitled to be promoted in the higher pay scale who have requisite higher qualification for promotion in the higher pay scale. Pursuant to the said notification dated 17.4.2000 (Annexure P-6), an impugned order dated 27.9.2001 (Anneuxre P-5) was passed.

Prior to December, 1999, no statutory regulations had been notified so as to regulate the appointment and other conditions of Class

I Service. Admittedly, the petitioner had already been granted the four tier revised pay scale in terms of notification (P-1 AND P-3) in the year 1998 itself. Thus, the promulgation of the 1999 class I Rules which render the petitioner ineligible for promotion to the post of Architect cannot take away the vested right to the revised pay scale upon completion of 4/9/14 years of regular service on the post of Assistant Architect.

The present writ petition was admitted on 28.8.2003 and the impugned order was stayed. The petitioner stood retired in the year 2006 and thus has availed all the benefits.

The only point for consideration before this Court is that whether the department after retirement of the petitioner can affect recovery from him.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***State of Punjab and others vs. Rafiq Masih and others, 2015 (1) RSJ 177*** wherein in para 12 and 13, it has been observed 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.*

(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.*

13. *We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”*

In view of the above mentioned judgment, the case of the petitioner falls in category (ii) and (iii) and thus the recovery cannot be

affected from him. Hence clause 12 (ii) and (iii) of ***Rafiq Masih's case (supra)*** would come to the rescue of the petitioner, as the petitioner had availed all the benefits and further retired from the service in the year 2006.

In view of the above, the writ petition is allowed and order dated 27.9.2001 (Annexure P-5) is hereby quashed.

The writ petition is allowed.

(RITU BAHRI)
JUDGE

13.6.2016
preeti/G.Arora