

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12252 of 2012
Date of decision: 09.08.2016

Paramjit Kaur

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab
for the respondents-State.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 07.09.2011 passed by respondent No.3 as well as order dated 28.05.2012 passed by respondent No.4 while re-fixing the pay of the petitioner vide which an amount of ₹90968/- was ordered to be recovered from the pay of the petitioner on account of wrong fixation of pay. A further prayer has also been made for directing the respondents to release full pay to the petitioner without any deduction and recovery.

Briefly, the facts of the case as made out in the present writ petition are that the petitioner was working as Multi Purpose Supervisor (Female) with the respondents. She was given proficiency step-up increments on completion of 8, 16 and 24 years of service as per notifications issued by the State Government from time to time. Another notification was issued on 25.09.1998, according to which, the employees, who had completed 8, 16, 24 and 32 years of service, were entitled for higher scale as well as increment on completion of continuous satisfactory

service. The petitioner became eligible for grant of proficiency step-up increment in view of notification dated 01.12.1988 on completion of 8 years of service and she was granted increment w.e.f.01.01.1986. Her pay was fixed at ₹1350/-. Thereafter, she was given 16 years proficiency step-up w.e.f.03.02.1997 and then 24 years step-up w.e.f.03.02.2005. Subsequently, vide order dated 07.09.2011, passed by the office of Civil Surgeon, Sangrur (respondent No.3) while re-fixing the pay of the petitioner, the proficiency step-up increments, which were given on completion of 16 and 24 years of service were withdrawn without assigning any reason or without giving any opportunity of hearing on the ground that vide letter dated 12.06.2009 issued by Director Internal Vigilance Branch (Revenue), Punjab Chandigarh and the instructions dated 17.08.2009, the pay of the petitioner was revised and re-fixed. The petitioner was informed by respondent No.4 regarding re-fixation of her pay and recovery of an amount of ₹90968/- due towards her from her pay. The petitioner made representation to the concerned authority stating therein that there were no allegations of fraud or concealment while granting said benefit and no recovery could be effected from her. The order of recovery as well as re-fixation of pay has been challenged in the present petition.

Learned counsel for the petitioner submits that as per settled position of law laid down by this Court as well as Hon'ble the Apex Court, no recovery can be made from the salary of the petitioner on account of wrong fixation of pay until and unless it is proved that the wrong fixation of pay was due to some misrepresentation or fraud on behalf of the petitioner.

Learned counsel also submits that the case of the petitioner is squarely

vs. State of Haryana, 1995(1) SCT 668, Union of India vs. M. Bhaskar and others, 1996 (4) SCT 57 and State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177.

Learned State counsel submits that as per instructions dated 01.09.1989, an employee would be eligible for proficiency increments in case, he/she has not gained any enhancement in the basic pay, except by way of annual increments and fixation of pay as a result of revision of pay scales from time to time. The petitioner got benefit of more than one increment and her service prior to selection grade should not have been counted towards proficiency step-up. The pay of the petitioner was rightly re-fixed keeping in view the aforesaid instructions. Learned State counsel has also brought to the notice of the Court clarification issued vide letter dated 01.09.1989. Although learned State counsel has opposed the submissions made by learned counsel for the petitioner but has not disputed the ratio of law laid down in **Rafiq Masih' case (supra)**.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders as well as other documents available on the file.

In **Rafiq Masih's case (supra)**, certain situations were summarised whereby recoveries by the employers would be impermissible in law and those situations are reproduced as under: -

“(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 case of the petitioner is squarely covered by the ratio of law laid down in **Rafiq Masih's case (supra)** wherein it has been held that the recovery from the employees belonging to Class-III and Class-IV service (Group 'C' and Group 'D' service) cannot be effected. The recovery can be effected in case, an employee has wrongfully been required to discharge duties of a higher post and has been paid.

In para No.12 of the **Rafiq Masih's case (supra)**, it has been held that in case, where payments have been mistakenly made by the employer, in excess of their entitlement, then recovery cannot be effected or it is impermissible under law under five situations as mentioned above.

In the present case, the benefit of proficiency step-up was

granted to the petitioner on completion of 8, 16 and 24 years of service,

which was subsequently withdrawn. The pay of the petitioner was re-fixed and the benefit was granted but there was no misrepresentation and fraud played by her as she was given the benefit as per instructions issued by the respondents-State. It is also not disputed that neither any show cause notice was issued nor any opportunity of hearing was given to the petitioner before re-fixing her pay or before passing of impugned orders dated 07.09.2011 and 28.05.2012. The amount has wrongly been recovered from the salary of the petitioner, which is contrary to law laid down in **Rafiq Masih's case (supra)**.

Accordingly, in view of the fact and law position as discussed above, the present writ petition is allowed and the impugned orders dated 07.09.2011 and 28.05.2012 are quashed. The respondents are directed to consider the case of the petitioner in view of the decision rendered by Hon'ble the Apex Court in **Rafiq Masih's case (supra)** within a period of two months from the date of receipt of certified copy of this order.

In case, the respondents come to the conclusion that the case of the petitioner is covered by the decision rendered in **Rafiq Masih's case (supra)**, then the amount recovered from the petitioner be refunded to her within a period of two months thereafter.

Allowed with the aforesaid directions.

09.08.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No