

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

CWP No. 11867 of 2013

Date of decision:-23.02.2016

Ashok Kumar Bihnoi and anr.

...Petitioners

versus

State of Hry. and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Karan Singh Kehar, Advocate
for the petitioners.

Mr. Ravi Pratap Singh, AAG, Haryana

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

Petitioners have approached this Court praying for issuance of writ in the nature of mandamus/certiorari for quashing order dated 02.01.2013 (P-2), order dated 18.06.2007 and order dated 01.04.2013 (P-6).

Petitioner No. 1 was appointed to the Haryana Civil Service (Executive Branch) (for short 'HCS (EB)') on 19.10.1993 and was given deemed date of appointment w.e.f 16.03.1989 and petitioner No. 2 was appointed to the Haryana Civil Service (Executive Branch) on 19.10.1993

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and was given deemed date of appointment w.e.f 21.03.1989. Thereafter, they were granted the senior scale of HCS (EB), vide order dated 25.10.2002 w.e.f 19.10.1998 and 12.11.1999, respectively. Petitioners were given the selection grade w.e.f 19.10.2003 vide Government order dated 31.03.2006 and 01.01.2004 respectively.

A tentative seniority list of HCS (EB) was circulated vide order dated 12.08.2005, which was finalised and circulated vide order dated 12.12.2006. Petitioner No. 1 was placed at Sr. No. 4 and petitioner No. 2 was placed at Sr. No. 11. Further petitioners were given deemed date of appointment on 16.03.1989 and 21.03.1989 with a rider that they would not be given any arrears of pay for the period they were out of employment, vide order dated 09.05.2007.

A CWP No. 3549 of 2007 was filed by Wazir Singh and others challenging the above mentioned seniority list assigned to the petitioners by arraying the petitioners as party in the petition. This Court vide order dated 03.08.2010 quashed order dated 12.12.2006. Petitioners preferred LPA No. 1015 of 2011 which was dismissed (P-1/).

Subsequently, petitioners retired from the service of State of Haryana on 31.08.2012 and 29.02.2012 respectively on attaining the age of superannuation. Thereafter, respondents upset the seniority list assigned to the petitioners, vide order dated 02.01.2013 (P-2) and recovery of Rs.19,10,383 and Rs.18,99,829/- respectively was sought to

be made from the petitioners.

Petitioners submitted representations dated 27.02.2013, 27.03.2013 and 09.04.2013 (P-3 to P-5) against the recovery sought to be made from the petitioners.

On notice a written statement has been filed on behalf of respondent Nos. 1 to 3 taking a stand that the recovery sought to be made from the petitioners was on the basis of quashing of seniority list in CWP No. 3549 of 2007 filed by Wazir Singh and further the petitioners were party in the petition and they filed LPA which was also dismissed and thus, they were aware of the fact that once the seniority list will be quashed, the petitioners will have to face the consequences. Recovery was not sought from the petitioners before the date of their retirement, as this Court vide order dated 31.05.2013 stayed the operation of impugned order dated 02.01.2013 (P-2). Reference has been made to judgment of Hon'ble the Supreme Court of India in a case of ***Chandi Prasad Uniyal and ors. vs. State of Uttarakhand and others, 2012 (8) SCC 417*** wherein it has been held that any amount paid/received without authority of law can always be recovered barring a few exceptions of extreme hardships but not as a matter of right. In such situations, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

I have gone through the records of the case.

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The point for consideration before this Court that whether the department after retirement of the petitioners can affect recovery from them, despite the fact that they had not made any misrepresentation.

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 appellants that

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 petitioners falls in category (ii) and (iii) and thus the recovery cannot be affected from them as they retired on on 31.08.2012 and 29.02.2012 respectively from the service of State of Haryana on attaining the age of superannuation and recovery was sought to be affected from them, vide order dated 02.01.2013 (P-2) i.e after their retirement. Respondents on 02.01.2013 are seeking to recover the benefit, which was given to the petitioners vide order dated 12.12.2006. Hence clause 3 (ii) of Rafiq Masih case (supra) would come to the rescue of the petitioners.

In view of the above, the writ petition is allowed and order dated 02.01.2013 (P-2) and order dated 01.04.2013 are hereby quashed to the extent that no recovery be effected from the petitioners, in view of the above mentioned judgments.

(RITU BAHRI)
JUDGE

23.02.2016

G Arora