

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 22296 of 2011

Reserved on: 08.02.2016

Date of decision: 27.02.2016

Thein Dam Workers Union

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms. Jagdeep Bains, Advocate,
for the petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J.

The members of the petitioner-Union seek the quashing of the order dated 19.05.2010 (Annexure P-3) whereby, recovery of excess pay was ordered to be effected w.e.f. 11.09.2002. The same had been granted to various employees (retirees as well as in service) working on the Ranjit Sagar Dam and Shahpur Kandi Dam projects in the scale of ₹1200-2100 as per para no. 26.4 and 26.9 of Chapter 26 of 3rd Pay Commission. The relief claimed is on the basis of the judgment of the Full Bench of this Court in ***Budh Ram and others vs. State of Haryana, 2009 (3) SCT 333*** and in consonance with the order dated 14.09.2011 (Annexure P-6) passed in ***CWP No. 17856 of 2000, State of Punjab and others vs. Ranjit Sagar Dam Mazdoor Union and others.***

The issue involved in the present case is whether the respondent-authorities are entitled to recover the above said amount as a

consequential result of the litigation which has been finalized inter se the parties by the Division Bench on 27.03.2009 and which was upheld on 04.09.2009 by the Apex Court and whether the petitioners are similarly situated to another set of employees who were granted the protection on 14.09.2011.

For deciding the issue in question, facts will necessarily have to be gone into in detail.

The members of the petitioner-union are mainly mechanics, drivers and masons and had raised an industrial dispute before the Labour Court claiming the pay scale of that of Technician Grade-III i.e. ₹1200-2100 being ITI diploma holders and having completed 3 years of service. The said claim was on the basis of paras 26.4 and 26.9 of Chapter 26 of the report of the 3rd Pay Commission and the circulars dated 02.08.1995 and 14.05.1996 issued by the Chief Engineer, Ranjit Sagar Dam itself. After the award was passed by the Labour Court, the Chief Engineer constituted a Committee regarding the implementation of Chapter 26. It was found that the recommendations were applicable only for future appointment/promotions and it was contrary to the instructions contained in Chapter 26. Accordingly, the instructions issued from time to time for implementation of the 3rd Pay Commission report were withdrawn and the employees' pay was refixed. Resultantly, the said action was challenged before this Court by the petitioner-union in a bunch of cases, the lead case of which was CWP No. 1067 of 2003 decided on 27.03.2009 (Annexure P-1). The Division Bench came to the conclusion that the entire basis of the award was the circulars issued by the Chief Engineer and if the same had been withdrawn, the same was permissible. However, it would not operate

retrospectively and the benefits granted could not be withdrawn. However, the employer was given the right to refix the pay from a prospective date. Accordingly, the writ petition was partly allowed by declaring that prior to the decision of the Committee, refixation was illegal and void. It was further held that where stay had been granted in some of the petitions, the respondents were at liberty to take appropriate decision in respect of the recovery of the amount to avoid hardship and undue financial burden at this stage. The relevant part of the order dated 27.03.2009 read thus:-

“We are of the opinion that the decision of the Committee (Annexure P-10), cannot operate retrospectively so as to permit the respondents to withdraw the benefits given to the employees in terms of the Awards of the Labour Court. However, the second part is whether the employer is within the right to refix the pay from a prospective date. The decision cannot be said to be illegal or arbitrary in any manner. The employer has a right to fix the emoluments payable to its employees and, therefore, the decision to refix the emoluments payable to its employees, cannot be said to be illegal only for the reason that subsequent decision has reduced the pay scale granted to the employees earlier.

In view of the said fact, we partly allow the present writ petitions by declaring that the refixation of salary from the retrospective date i.e. prior to the decision of the Committee, is illegal and void. Since the impugned orders were stayed in few of the writ petitions, the workmen must have been paid higher pay scale. Therefore, in respect of the employees, who are petitioners in the aforesaid cases, the respondents shall be at liberty to take appropriate decision in respect of the recovery of the amount so paid to avoid hardship

and undue financial burden at this stage, keeping in view the interim orders passed by this court.”

The said decision was challenged before the Apex Court unsuccessfully and the Special Leave Petition was dismissed on 04.09.2009 (Annexure R-1). In pursuance of the decision of the Division Bench, the impugned order was passed ordering the recovery to be done from 11.09.2002, on which date the recommendations of the Committee were accepted. In the meantime, the Full Bench judgment was rendered in *Budh Ram's case (supra)* wherein, it was held that where there is no fraud, misrepresentation or other act of deception on behalf of the employee, recovery would not be permissible. Resultantly, the petitioner-union filed representation dated 04.10.2011 (Annexure P-4) praying for the necessary relief.

In a similar set of litigation, the State had approached this Court against an award dated 31.08.1999 regarding another set of union workers. A Single Bench of this Court, while placing reliance upon the Full Bench judgment in *Budh Ram's case (supra)* and while noticing the judgment of the Division Bench in the petitioner's case, allowed the writ petition and set aside the award of the Labour Court. However, it was directed that no recovery be effected from the members of the said union. The order dated 14.09.2011 reads thus:-

“Counsel for the parties are ad-idem that the controversy in the present petition is squarely covered by a Division Bench judgment of this Court in CWP No. 1067 of 2003, titled as Thein Dam Workers Union (Regd.) Shahpurkandi vs. State of Punjab and others, decided on 27.03.2009.

Counsel for respondent no.1, however, submits

that as the Hon'ble Division Bench has directed the respondents to consider the question of recovery in the context of the hardship likely to visit to members of respondent no. 1 and in the meanwhile a Full Bench of this Court has held in Budh Ram Vs. State of Haryana, 2009 (3) SCT, 333 that bona fide payments received by employees shall not be recovered, the petitioners may be directed not to recover any amount already paid to members of respondent no. 1.

I have heard counsel for the parties and am satisfied that the controversy in the petition is squarely covered against respondent no. 1 by a Division Bench judgment of this Court in Thein Dam Workers Union (Regd.) Shahpurkandi's case (supra). However, in view of the Full Bench judgment in Budh Ram's case (supra), the respondents shall not recover any amount already paid to members of respondent no. 1.

As a consequence, the writ petition is allowed and the award dated 31.08.1999 of the Labour Court is set aside.

No order as to costs."

Counsel for the petitioner accordingly, on the strength of the said order, has argued that the members of the petitioner-union are entitled for the same benefits. It is further pointed out that in view of the judgment of the Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (1) RSJ 177***, they are entitled for the protection in view of their holding class 'C' and Class 'D' posts and because some of them having retired even prior to the order of the Division Bench.

Counsel for the State on the other hand, has defended the said order by holding out that it is only a consequential order passed and the litigation had already become final on 27.03.2009. The order passed on

14.09.2011 was sought to be distinguished on the ground that it did not cover the controversy and award in the present case.

It is not a matter of dispute that after the judgment of the Full Bench in *Budh Ram's case (supra)*, the matter was considered by the Apex Court in *Syed Abdul Qadir and others vs. State of Bihar and others, 2009 (3) SCC 475* and in *Chandi Prasad Uniyal vs. State of Uttrakhand 2012 (8) SCC 417*. The view of the Apex Court was that where there is excess payment made and the error, if detected within a short period of time, recovery was permissible and the same could be done in easy installments.

The view was further crystalized in *Rafiq Masih's case (supra)* and the above said judgments were all subject matter of consideration. Resultantly, Class III and IV or Group 'C' and 'D' service employees were protected from the recoveries made apart from the retired employees or who were due to retire within one year. Similarly, where excess payment had been made in excess of five years before the order of recovery was issued and where the recovery would be harsh or arbitrary and iniquitous, the employees were to be protected. The relevant observations in *Rafiq Masih's case (supra)* read thus:-

“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."

As noticed above, it is not disputed that the members of the petitioner-union are doing the job of fitters, carpenters, electricians, welders, plumbers, masons, pump operators, turners, auto mechanics, linesman and belong to the category of the exceptions which have been protected by the Apex Court, which would be clear from Annexure P-12. The petitioners have also placed on record that 30 members of the union already stand retired between the years 2003 to 2014 (Annexure P-14). The specific reasoning in *Rafiq Masih's case (supra)* for excluding the retired set of employees is that they would have necessarily spent that amount which they would have received by virtue of the extra payment made to them. The recovery orders and the details of recovery would also go on to show that amounts ranging from ₹1,753/- to ₹3,00,000/- have been received by them (Annexure P-13) for periods ranging over a decade from 2002 onwards.

The circulars issued by the Chief Engineer were in the year 1995 and 1996. The awards in question were passed in 1998 and 1999. The order of recovery which was subject matter of challenge in the earlier writ petition was dated 01.01.2003. Therefore, the workmen had drawn the extra benefits for a period in excess of five years from the date of circulars/awards before their pay was refixed. In a similar dispute involving another union, this Court has already granted the relief of recovery after noticing the order of the Division Bench dated 27.03.2009.

Keeping in view the cumulative aspects in mind and the fact that the members of the petitioner-union would be identically placed as to the other members of the Ranjit Sagar Dam Mazdoor Union, it would be iniquitous to deny the petitioners similar relief wherein similarly situated persons have got relief from this Court and the said order has not been challenged by the respondents.

Accordingly, this Court is of the opinion that the case of the petitioner-union falls within the categories which are exempted and protected from the recovery proceedings. The Division Bench had also directed that the respondents were to take appropriate decision regarding the recovery of the amount which had been paid in view of the stays granted in the writ petitions. Thus, a large number of workmen had got higher pay scales till 27.03.2009 when they had challenged the order dated 01.01.2003, regarding which also, the respondents have not passed any separate order in spite of the directions issued by the Division Bench and have directed whole scale recovery w.e.f. 11.09.2002.

Resultantly, this Court is of the opinion that the members of the petitioner union are entitled for the benefit of the principles laid down in the

judgment of *Rafiq Masih's case (supra)*.

Accordingly, order dated 19.05.2010 (Annexure P-3) directing recovery against them is quashed and the writ petition is allowed.

27.02.2016
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(G.S. SANDHAWALIA)
JUDGE

