

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23397 of 2011
Decided on : 28.04.2016

Ram Kumar Sharma & others

... Petitioners

Versus

State of Punjab & others

... Respondents

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

Present : Mr.Pawan Kumar , Advocate, for
Mr.Amit Chopra, Advocate, for the petitioners.

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

G.S. Sandhawalia, J. (Oral)

Petitioners challenges the memo dated 25.02.2011 (Annexure P2), vide which, the recovery of salary, already paid to the petitioners, had been ordered. The reason for recovery is that the petitioners had availed of a jump in the pay benefits and the benefit of ad hoc services had already been given, which was not admissible.

Counsel for the petitioners, at the time of notice of motion order dated 15.12.2011, had restricted the relief, only to the issue of recovery and not the re-fixation, on merits.

On 19.12.2015, additional affidavit had been filed on behalf of respondents No.2 to 4, pertaining to the case of petitioners No.5 to 7, wherein it had been deposed that the petition has been rendered infructuous, regarding petitioners No.5 to 7 and no recovery was liable to be effected from them. Accordingly,

keeping in view the the additional affidavit filed, the present writ petition, qua the above-said petitioners, has been rendered infructuous.

Regarding petitioners No.1 to 4, additional affidavit has, now, been filed, of the Deputy Commissioner, Hoshiarpur and the details of the amounts which they had drawn and the amount of recovery, which has been effected from them, has been mentioned. It has further been deposed that in view of the decision of the Apex Court in **State of Punjab & others Vs. Rafiq Masih (White Washer) etc. 2015 (1) RSJ 177** and the instructions dated 28.08.2015 (Annexure R1/5), future recovery of excess payment made to the employee is to be regulated as per ratio of the judgment dated 18.12.2014. Relevant portion of the affidavit reads as under:

“3. That the petitioner no.1, Sh. Ram Kumar, was promoted as P.A. on 01.08.1997. He was given two promotional increments instead of one increment. The audit party from the office of Accountant General, Punjab issued letter no.6/71/2006-2FP2/6024 dated 25.09.2006 (Copy attached as Annexure-R-1/1). On the basis of this letter of Accountant General, recovery of Rs. 50711/- from 1.1.1997 to 31.3.2009 was effected from Sh. Ram Kumar P.A., who has retired from service on 31.3.2015.

4. That Petitioner No. 2, Smt. Sudesh Kumari, Junior Assistant was placed in the pay scale of Rs. 5000-8100 as per recommendations of 4th Punjab Pay Commission. As per notification no. 7/1/97-FPI/7370 dated 19.5.1998, the scale Rs. 4400-7000 was fixed for Junior Assistant. (Copy attached as Annexure-R-1/2). So, the pay of Smt. Sudesh

Kumari, Junior Assistant was again refixed vide letter No. 35-39/E.A. Dated 03-01-2002 of Deputy Commissioner Hoshiarpur and recovery of Rs. 9813/- from 1.1.96 to 15.9.98 has been effected from her.

5. That Petitioner No.3, Smt. Urmila Devi, Junior Assistant was placed in the pay scale of Rs. 5000-8100 as per the recommendations of 4th Punjab Pay Commission vide letter No.35-39/E.A. Dated 03-01-2002 of Deputy Commissioner Hoshiarpur (Copy Notifications attached as Annexure-R-1/3). As per notification no. 7/1/97-FPI/7370 dated 19.5.1998, the scale Rs. 4400-7000 was fixed for Junior Assistant. So the pay of Smt. Urmila Devi, Junior Assistant was again refixed and recovery of Rs. 9832/- from 1.1.96 to 15.9.98 has been effected from her.

6. That Petitioner No.4, Sh. Ashok Kumar Rattan was designated as Junior Assistant from 1.1.1986 and he was given benefit Assured Career Progression (A.C.P.) from 1.1.1994 by counting his entire service. The excess payment of Rs. 13314/- from 1.1.1996 to 1.1.2001 has been recovered in compliance with Pb. Govt. Finance Deptt. Letter No.28/4/794/1/97- FPI/314 dated 10.1.1996. (Copy attached as Annexure-R-1/4). This employee has retired on 30.6.2008.

7. That the Govt. of Punjab, Department of Finance (Finance Pension Policy & Coordination Branch), on the basis of decision of Hon'ble Supreme Court of India in S.L.P. (C) No.11684 of 2012 titled State of Punjab & others V/S Rafiq Masih (White Washer) and others, has issued notification no.4/118/09-IFPC/575043/1 dated 28.8.2015, (Copy attached as Annexure-R-1/5) in which it has been conveyed that in future recovery of excess payment made to the employee is to be regulated as per ratio of the judgment dated 18.12.2014."

From the above contents of the affidavit, it would be clear that the four petitioners in question have been drawing the

amount from the year 1997 onwards and it was, thus, more than 5 years prior to the recovery which was being effected when the recovery was ordered on 25.02.2011. In such circumstances, it is apparent that the petitioners are entitled for the benefit of the observations of the Apex Court in Rafiq Masih (supra) that recovery is not to be effected where the amount is drawn for more than 5 years, prior to the order of recovery. The principles laid down read 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.”

Resultantly, the present writ petition is allowed, qua petitioners No.1 to 4. The amounts which had been recovered from the said petitioners be refunded to them along with interest @ 8% per annum, from the date of recovery till its payment, failing which, the interest element will go upto 10% per annum. Needful be done within a period of 2 months from the receipt of the certified copy of this order.

APRIL 28, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE