

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

CWP No. 21689 of 2012
Date of decision: 26.08.2016

Ved Parkash Sareen and another

....Petitioners

Versus

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. B.S. Jaswal, Advocate,
for the petitioners.

Mr. Prateek Mahajan, Advocate,
for respondent No. 2.

P.B. BAJANTHRI, J. (Oral)

In this petition, the petitioners are retired Head Teachers.

They have questioned Annexure P-5 dated 15.04.2010.

The petitioners are stated to be in the Cadre of Head Teacher and they have retired from service in the year 2006-2007 respectively. While they were in service, on 21.12.2001 additional two increments were granted. Thereafter, the same was noticed by the respondents that the petitioners were not eligible for two increments which was granted on 21.12.2001. There is an internal decision taken by the respondents and directly ordered for recovery of excess payment vide Annexures P-1 and P-2 dated 20.09.2004. The petitioners approached the respondents stating that in an identical matter i.e. in CWP No.4401 of 2008, a direction has been given by this Court to refund the amount of recovery. However, the same was rejected vide letter dated 15.04.2010 Annexure P-5, stating as under:-

“It is informed that you have enclosed the order of Punjab and Haryana High Court, Chandigarh in CWP No. 4401 of 2008 of Sh. Puran Singh. Shri Puran Singh was refunded the amount of recovery on the basis of the order of Punjab and Haryana High Court, Chandigarh. No orders of Hon'ble Punjab and Haryana High Court Chandigarh has been passed in your case so the amount of recovery cannot be refunded.”

The petitioners has thus questioned the validity of Annexure P-5 dated 15.4.2010.

The learned counsel for the petitioners submits that the respondents before holding that the petitioners have been paid excess amount of ₹ 30,123/-, on account of refixation of pay w.e.f 01.01.1986 including ACP benefit of 24 years of service and 32 years of service and before passing Annexure P-1 and P-2 refixation along with notice stating that the petitioners are not entitled to additional two increments, the orders has not been made available or no show cause notice has been issued. Straightaway the respondents have ordered for recovery and for refund of amount. Learned counsel for the petitioners further contends that Annexure P-5 dated 15.04.2010 contains that the respondents' view is that the petitioners have not approached this Court and obtained the same order to that of Shri Puran Singh, therefore the petitioners are not entitled for refund of recovered amount. Therefore, reasoning assigned in Annexure P-5 dated 15.04.2010 is to the extent that the petitioners have not approached this Court and obtained an order similar to that of Shri Puran Singh and not on merits therefore, Annexure P-5 is liable to be set aside.

Per contra learned counsel for the respondent No.2. vehemently contends that it is an admitted fact that two increments granted in the year 2001 were contrary to the facts therefore question of issuance of notice may not arise. He further contends that the petitioners have retired on 31.03.2006 and 31.12.2007, respectively. They have approached this Court only in October, 2012 hence, they were not entitled for the relief sought. Learned counsel for the respondent No.2 relied on decision of this Court in **2015 (2) SCT 209 Rajesh Vs. State of Haryana and others in respect of delay; 2015 (2) SCT 180, Dalbar Singh and another Vs. State of Punjab and others; 2015 (1) PLR 487, Suresh Kumar Vs. State of Haryana and others & 2015 (2) SCT 166 Jasvir Kaur Vs. State of Punjab and others.** First decision is relating to revival of the stale claim therefore there is delay and latches. The same cannot be entertained. Second case is relating to seeking advance increment for acquiring higher qualification, therefore they are not entitled for advance increment on the ground of delay. The third case is relating to dismissal from service with reference to conviction of petitioner under Section 354 IPC and fourth case is relating to selection and appointment.

The present case is distinguishable with reference to the cited decisions for the reasons that the respondents have taken a decision to grant two increments to Head Teachers in the year 2001. Decision has been taken by the respondents that grant of two increments was not in order and ordered for recovery. Some of the employees approached this Court submitting that order of recovery is bad and for refund of the recovered amount. Based on that decision

the petitioners have also approached the respondents stating that they are also similarly placed therefore they are also entitled for refund of recovered amount. The respondents while declining to grant relief have stated that the petitioners have not approached this Court on par with Shri Puran Singh therefore question of refund of amount do not arise in respect of the petitioners are concerned. Learned counsel for the respondent No. 2 further submits that petitioners are not entitled to any relief in view of decision viz. **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others 2012 (8) SCC 417** read with **State of Punjab and others Vs. Rafiq Masih 2015 AIR (SC) 696**, the petitioners are not entitled for the relief sought. In the **Rafiq Masih** (supra) case the Hon'ble Supreme Court has held as follow:-

“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) Recover in cases where an employee has wrongfully been required to discharge duties of 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.”*

Heard learned counsel for the parties.

The respondents did not utter even a single word in Annexure P-5 that there is delay on the part of the petitioners and even on merit also they have not uttered a single word as to why the petitioners are not entitled. On the other hand they have stated that the petitioners did not approach the Court and obtained the orders on par with Shri Puran Singh. Cited judgments are not relevant for the purpose of the present case. In the present case the respondents have not rejected the claim of the petitioners on merit as well as on delay. In the present case before ordering recovery vide Annexure P-1 and P-2, no show-cause notice has been issued. Without issuing show-cause notice or giving an opportunity of refixation of pay and recovery of amount is a civil consequence which affects their pay as well as order of recovery. So far as the order passed in **CWP No. 4401 of 2008** is concerned read with Annexure P-5, it is evident that the judgment is *in rem* and it is not *personam*. Therefore, the respondents rejecting the claim of the petitioners that they did not get or have an order of this Court therefore they are not entitled for refund may not be correct. The respondent being a model employer should have adhere to issuance of a show-cause notice before refixation of pay and order of recovery. On this ground itself, the Annexure P-5 is liable to be set aside. The respondents are directed to refund the recovered amount to the petitioners on par with similarly situated Head Teacher whose recovered amount has been refunded. The respondents are directed to refund the recovered amount to the

petitioners within 4 months from today.

26.08.2016
PA

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No