

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

CWP No. 20811 of 2015

Date of decision:-22.04.2016

Shri Bhagwan

...Petitioner

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. Ravi Pratap Singh, A.A.G. Haryana

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

RITU BAHRI , J.

Petitioner has approached this Court praying for issuance of writ in the nature of certiorari for quashing the action of the respondents deducting an amount of Rs.4000/- per month from the salary of the petitioner w.e.f June, 2011 and further prayer is for issuance of direction to the respondents to release the payment of the amount deducted w.e.f June, 2011 along with interest.

Petitioner was recruited as Constable in the Haryana Police on 27.08.2004. Petitioner could not attend the office on account of his illness and the absence period of the petitioner was treated as leave by

respondent No. 3, vide order dated 23.05.2011 (P-1). Thereafter, petitioner was not paid the full salary as is being paid to other counter parts of the petitioner. Vide letter dated 14.09.2015 (P-2), petitioner was informed by Public Information Officer-cum-Dy. Supdt of Police (Head Quarter) Jind that an amount of Rs.4000/- per month is being deducted from his salary on the basis of order dated 23.05.2011 and it has further been informed that an amount of Rs.3,64,086/- has been paid to the petitioner in excess and thus the same is being deducted from his salary w.e.f the month of June, 2011. Hence the present writ petition.

Learned counsel for the petitioner submits that there is no such direction in order dated 23.05.2011 for recovering the excess payment given to the petitioner and for recovery of Rs.4000/- per month.

Further, the recovery is being affected without issuing any notice to the petitioner and without giving any opportunity of hearing. Recovery by the employee would be impermissible in law, if payments have mistakenly been made by the employer to the employee, in view of Hon'ble the Supreme Court judgment in a case of ***State of Punjab v. Rafiq Masih 2015 (1) SCT 195***

Learned State counsel on the other hand while referring to the written statement contends that petitioner was enlisted on police department as Constable on 27.08.2004 and in the year 2009, vide office order dated 31.01.2009, a regular departmental inquiry was initiated again

him on the allegations of wilful absence for a period of 175 days 20 hours and 55 minutes. However on inquiry it was found that the absence of the petitioner is not intentional, rather the same was on account of illness of the petitioner himself. Thereafter, vide order dated 11.12.2009, the department inquiry initiated against the petitioner was dropped and the absent period w.e.f 04.12.2007 to 23.04.2008 was treated as leave of kind due and it was decided to decide the whole absent period on arrival of the petitioner from absent.

Thereafter, this court vide order dated 15.02.2016 passed the following order:-

“As per the order dated 23.5.2011 (Annexure P.1), the period of absence of the petitioner was treated as under:-

Sr. No.	Particulars	Rule under which Leave sanction	Period		Remarks
			From	to Days Total	
1	Earned Leave	8.133 read with 8.116 of CSR Vol-I Part-I	04.12.2007 to 18.12.2007=	15 days E.L. on full pay	
2	Half pay leave	8.133 read with 8.119(b) CSR Vol-I Part-I	19.12.2007 to 16.04.2008=	120 days	On medical ground
3	Extra Ordinary Leave without pay	8.121/8.137 of CSR Vol-I Part-I	17.04.2008 to 23.04.2008=	07 days E.O.L.	On medical ground
4	Extra Ordinary -do- (Earned Leave)	8.121/8.137 of CSR Vol-I Part-I 8.133 read with 8.116 of CSR Vol-I Part-I	20.04.2008 to 02.12.2008=	223 days E.O.L 03.12.2008 to 04.01.2009 = 34 days E.L. on full pay period already been Sanctioned vide OB No.60/09)	On medical ground
5	Extra Ordinary -do-	8.121/8.137 of CSR Vol-I Part-I	05.01.2009 to 06.05.2011=	852 days E.O.L	On medical ground

For the period w.e.f. 17.04.2008 till 06.05.2011 was to be treated as extra-

ordinary leave without pay. The respondent despite the above said order made payment of salary to the petitioner. The payment of salary has been released to the petitioner which is now being sought to be recovered. A better affidavit be filed by the Superintendent of Police, Jind explaining what action they have taken against the government employee who despite the order Annexure P.1 released the salary.”

In compliance of above said order dated 15.02.2016, affidavit of Abhishek Jorwal, Supdt of Police Jind-respondent No. 3 has been filed in the Court and it has been stated that the petitioner remained absent from duty w.e.f 04.12.2007 to 06.05.2011. Thereafter, vide order dated 23.05.2011, respondent No. 3 decided the whole absent period and this order is not under challenge in this petition and the recovery which is as a result of consequence of the order is under challenge before this Court. The absent period of the petitioner has been decided as per his length of service and entitlement of leave. The absent period of the petitioner was treated as extra ordinary leave without pay and as a consequence of which recovery of Rs.3,64,086/- on account of pay and allowances, during the absent period, was to be done from the petitioner and on this account, Rs.4000/- per month was deducted from the pay of the petitioner w.e.f June, 2011.

After hearing learned counsel for the parties at length, the writ petition deserves to be dismissed on the ground that once the petitioner had not challenged the order dated 23.05.2011 whereby the

absent period of the petitioner was treated as extra ordinary leave without pay, therefore, now the petitioner cannot seek directions from this Court for quashing the action of the respondents deducting an amount of Rs.4000/- per month from the salary of the petitioner w.e.f June, 2011. The above said recovery was made in accordance with Rules. The order dated 23.05.2011 was passed after holding the regular departmental inquiry. Further order dated 23.05.2011 has attained finality and almost five years have gone by. The petitioner is now working in the department and the department can recover the excess payment given to the petitioner

For the discussion made above, the writ petition is dismissed.

(RITU BAHRI)
JUDGE

22.04.2016

G Arora