

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20898 of 2015
Date of Decision : 29.11.2016

Vikas Kumar and others

..... Petitioners

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. S.S. Shekhawat, Advocate
for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General, Haryana.

Anupinder Singh Grewal (Oral)

The petitioners who are stated to be working as JBT Teachers/Science Master/Mistress in the department of Education have challenged the orders dated 04.08.2015 and 04.09.2015 (Annexure P-2 colly) passed by the respondents whereby the pay of the petitioners has been re-fixed and recovery is sought to be effected from them.

The petitioners are stated to be working as JBT Teachers/Science Master/Mistress which is a Class-III post. The petitioners were granted benefit of annual increment w.e.f. 01.07.2009. Vide the impugned orders, the pay of the petitioners has been refixed w.e.f. 07.01.2015 and recovery is to be effected from them for the benefit of

annual increment which had been accorded to them in the year 2009.

Learned counsel for the petitioners contends that he is not challenging the refixation of the pay of the petitioners but confining his prayer against the recovery which is to be effected from the petitioners.

I have heard learned counsel for the parties and perused the writ petition.

I am of the considered view that the action of the respondents in effecting recovery from the petitioners is unsustainable in law as it has been held by the Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih, 2015(4) SCC 344** that although it is permissible for an employer to effect recovery from an employee but five exceptions have been carved out wherein the recovery would be impermissible in law. Those exceptions are as under:-

- “(i) Recovery from the employees belonging to Class III and IV service (or Group C and D service)
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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 recovery.”

Indisputedly, the petitioners are working on a Class-III post and

had continued to draw the increment for a period of over five years from 2009 to 2015 and hence their case would fall in the exceptions (i) and (iii) in the case of **State of Punjab and others Vs. Rafiq Masih(supra)**.

Consequently, the petition is allowed. The impugned orders dated 04.08.2015 and 04.09.2015 to the extent of effecting recovery from the petitioners are set aside.

(ANUPINDER SINGH GREWAL)
JUDGE

November 29, 2016
jt

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No