

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

CWP No.372 of 2012
Decided on:02.02.2016

Balbir Singh

... Petitioner

Vs.

State of Punjab & ors.

... Respondents

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

Present: Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S.Sandhawalia, J.(Oral)

The petitioner seeks the quashing of order dated 02.08.2011 (Annexure P-9) wherein representation against the recovery of Rs.3,30,000/- made by the respondents was rejected. The ground taken by the respondents were that there was an earlier writ petition bearing CWP No.14212 of 2007, which had been withdrawn by him and thereafter also he had withdrawn another CWP No.17782 of 2008 on 30.10.2009 and therefore had accepted the recovery. Resultantly, the judgment of Full Bench of this Court passed in ***Budh Ram vs. State of Haryana, 2009(3) SCT 333*** would not be applicable.

Learned counsel for the petitioner vehemently submitted that no proper procedure has been followed while getting the recovery effected from the petitioner and there was no proper order for recovery on the basis of which the order can be sustained. In order to appreciate the controversy in question, it is necessary to note the background in which the impugned order has been passed.

The petitioner was working as a Sub Divisional Engineer and his pay was fixed vide order dated 26.03.2007/26.04.2007 (Annexure P-1). By virtue of the fixation, certain arrears were paid to him to the tune of Rs.4,86,080/- whereas an amount of Rs.1,03,550/- was deducted as income tax in addition to payment made. The said amount was found to be in excess and accordingly, recovery of Rs.3,22,288/- was sought to be effected from the petitioner apart from another amount of Rs.8,488/-. Resultantly, show cause notice dated 23.05.2008 was issued to him to refund the amount of Rs.2,95,776/- since recovery of Rs.35,000/- had already been made. An order dated 13.06.2008 (Annexure P-3) and another order dated 11.07.2008 were also passed. The above communications were challenged by the petitioner by filing CWP No.17782 of 2008. The said writ petition was allowed along with a bunch of cases by this Court titled as ***Darshan Singh vs. State of Punjab & ors.*** On 27.05.2009 (Annexure P-4) bearing CWP No.677 of 2008.

Keeping in view the judgment passed by Full Bench in Budh Ram(supra), the petitioner, who fell in category I wherein only the recovery, which had been effected had been challenged, benefit was granted and recovery orders were quashed while upholding the re-fixation of salary. Resultantly, directions were issued to refund the amount to the petitioner, which was recovered either in part or whole whatever applicable. The relevant part reads as under:

"In view of the above, these petitions are thus allowed. The action of the respondents and the impugned orders passed for recovery are hereby quashed while upholding the re-fixation of their salaries etc. It is, however, directed that the respondents will refund the amount already recovered either in part or whole wherever

applicable as indicated here-in-above."

It is the case of the petitioner that amount was refunded to him, what had been recovered. Thereafter, the State filed a review application No.358 of 2009 in the case of the petitioner in CWP No.17782 of 2008. However, it is not disputed that thereafter petitioner on his own deposited a sum of Rs.2,25,776/- vide receipt dated 05.10.2009 (Annexure P-5) in which it is mentioned that it was on account of excess payment and as directed by the Executive Engineer. Learned counsel for the petitioner himself gave a statement that he had no objection if the review application was allowed and order was recalled. The order dated 30.10.2009 reads as under:

"Notice of the RA.

AT this stage, Mr. Sudhir Sharma, Advocate, accepts notice on behalf of the petitioner in CWP No.17782 of 2008.

Learned counsel for the writ petitioner (respondent in the RA) has filed an affidavit dated 30.10.2009 of the petitioner and submits that the petitioner has no objection if the present review petition is allowed and the order is recalled. Affidavit is taken on record.

In view of the above, present RA is allowed. Order dated 27.05.2009 is recalled qua CWP No.17782 of 2008."

Vide order of even date, the writ petition was also dismissed as withdrawn. The said order reads as under:

"In view of the order of even date passed in RA No.358 of 2009, with the consent of the learned counsel for the parties, present writ petition is taken on board for hearing.

Learned counsel for the petitioner seeks to withdraw the writ petition. Prayer is allowed. Writ petition is

dismissed as withdrawn."

After having accepted the above result of the litigation and being well aware that he himself had withdrawn his writ petition, which had been decided in his favour and given a consent to the review the issue, recovery of Rs.3,30,000/- was sought to be re-agitated by filing writ petition CWP No.372 of 2012. The impugned order dated 02.08.2011 has, thus, been passed on the basis of the background as noted above inter se the parties.

Learned counsel for the petitioner has vehemently tried to submit that the department has not followed any procedure and has forced him to deposit the amount.

In the considered opinion of this Court once proper show cause notice was issued, which was successfully initially challenged by the petitioner and recovery had also been set aside, the petitioner on his own gave consent and accepted the withdrawal of the writ petition and for reasons best known to him and deposited the amount.

Once he has given up his right to contest the show cause notice and the recovery order, which had been passed against him, he could not be allowed to reagitate the issue on different grounds altogether that he had been forced to deposit the amount. The dispute inter se had come to an end by the review application being allowed and dismissal of the writ petition vide order dated 30.10.2009 and on the deposit of the amount of Rs.2,25,776/- on 05.10.2009.

In such circumstances, the representation, which has been filed raising the same issue again was without any basis. The petitioner is as much bound by the decision inter se the earlier litigation as is the respondent department.

In these circumstances, there is no scope for interference
in the present writ petition and the same stands dismissed.

02.02.2016
sonia

(G.S.SANDHAWALIA)
JUDGE