

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

1. CWP No. 22846 of 2014

Surender Singh **...Petitioner**

versus

State of Haryana and others **..Respondents**

2. CWP No. 24160 of 2014

Gopal Aggawal & ors. **...Petitioner**

versus

State of Haryana and others **..Respondents**

3. CWP No. 9331 of 2015

Satyadev Sharma **...Petitioner**

versus

State of Haryana and others **..Respondents**

Date of decision:-21.01.2016

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sumit Sangwan, Advocate, for the petitioner(s).

Mr. Gaurav Goel, AAG, Haryana

Mrs. Munisha Gandhi, Sr. Advocate with
Ms. Salina Chalana, Advocate, for respondent No.3 and 4

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

RITU BAHRI , J.

This order shall dispose of the above three petitions as

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integrity of this document

common question of facts and law are involved in all these petitions wherein prayer is for quashing of impugned orders whereby order of recovery made from pay of petitioner(s) in view of the clarifications respectively and further prayer is for directing the respondents to refund back the amount with interest recovered from the petitioner(s).

Petitioner-Surender was appointed as Clerk on 14.01.1983 in the Administration of Justice Department Haryana in the jurisdiction of District and Sessions Judge, Bhiwani and was promoted as Assistant on 14.08.2002 and further promoted to Grade-II and Grade-I in the year 2013 and 2014 respectively. Thereafter, vide letter dated 23/25.07.2005 (P-4), Government of Haryana has adopted recommendations of Shetty Commission in toto, in pursuance of orders of Hon'ble the Supreme Court of India and the petitioners has been granted one increment to the common category post in ministerial cadres to whom higher pay scales not recommended. Vide letter dated 03.08.2005, the Government revised the pay scale of the petitioner at the pay scale of Rs.5000-7800 and the benefit of one increment was granted to the petitioner. However, vide letter dated 19/20.10.2011 the Government clarified that the benefit of one advance increment will be given on the existing pay scales instead of the initial pay scales. A further clarification dated 14/18.03.2013 was issued regarding the increment by saying that the advance increment will be provided but advance increment never

means additional increment. Thus, respondent No. 4 started recovery from the salary of the petitioner vide order dated 26.09.2014 (P-1) and in the salary of September 2014-15, a deduction of Rs.8275/- has been made by respondent No. 2.

Learned counsel for the petitioner has relied upon instructions dated 15.07.2010 issued by the Haryana Government (P-8) regarding granting of advance increment and in para 8 of these instructions it has been specifically mentioned that these increments shall be merged into normal increments but no recovery shall be effect.

Learned counsel for the petitioner has relied upon a judgment of Hon'ble the Supreme Court judgment in **Sahib Ram vs. State of Haryana, 1995(1) SCC 668** to contend that the action of the respondents is clearly arbitrary.

Learned counsel for the petitioner has further referred to a Full Bench decision of this Court in **Budh Ram vs. State of Haryana and others 2009(3) PLR 511** wherein it has been held that neither any recoveries can be affected from an employee who received the benefit without any fault or misrepresentation on his part nor the basis pay of an employee can be refixed or brought down without any notice, reply, opportunity of hearing and passing of a speaking order.

In the present case as well, the petitioner has not made any

misrepresentation and thus recovery could not be effected from the petitioner

As per instructions dated 15.07.2010 issued by the Haryana Government (P-8), a conscious decision has been taken by the Government with regard to grant of advance increment to Government employees for doing work of exceptional merit. The relevant portion of the instructions reads as under:-

The issue of granting the advance increments to the government employees for doing work of exceptional merit was under the consideration of the Government for quite some time. Now, after consideration the Government has decided to grant advance increments to its officials/officers on the following conditions:-

1. A person who has already got two or more advance increment(s) in the past should not be granted the same in future.
2. The maximum age for the grant of advance increment (s) should be 55 years.
3. The official should have earned at least 70% 'Outstanding reports'. None of his ACRs during entire service should be “Average” or 'Below Average'. His integrity should never have been doubted.

4.	x	x	x
5.	x	x	x
6.	x	x	x
7.	x	x	x

8. Those employees who are getting additional increments wrongly due to misinterpretation of advance increment as additional increment; henceforth these increments shall be merged into

the normal increments but no recovery shall be affected.”

Thus once the Government has decided not to affect recovery from the employees who are getting additional increments due to misinterpretation of advance increment as additional increment, orders dated 26.09.2014 and 03.04.2015 should not have been passed.

Accordingly, the present writ petitions are allowed and orders dated 26.09.2014 and 03.04.2015 are hereby quashed. A direction is given to the respondents to refund the amount to the petitioners, within a period of four months from the date of receipt of certified copy of this order is received.

(RITU BAHRI)
JUDGE

21.01.2016

G Arora