

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

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CWP-24498-2014

Date of Decision:21.11.2016

MAHAVIR SINGH

...PETITIONER

VERSUS

V/S STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Jai Bhagwan Sharma, Advocate
for the petitioner.

Mr. Harish Rathi, Senior DAG, Haryana.

Mr. Vishal Gupta, Advocate
for respondents No.1 and 2.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has impugned order dated 31.10.2014 (Annexure P-1) to the extent whereby his pay has been reduced and recovery was sought to be effected from him. The petitioner was promoted to the post of Assistant Marketing Officer vide order dated 04.01.2007 and placed in the pay scale of Rs.6500-10500. He was also granted additional increment w.e.f. 01.07.2007 which raised his pay to Rs.16,160 + Rs.4200 grade pay w.e.f. 01.07.2007. The respondents vide impugned order dated 30.10.2014 are seeking to effect recovery from the petitioner as he was not found entitled to the additional increment under Rule 4.4 (a) (i) read with Rule 4.13 of the Civil Services Rules.

Learned counsel for the petitioner has contended that the

petitioner had been drawing the additional increment for over five years and hence his case falls in the exceptions carved by the Hon'ble Supreme Court in the case of 'State of Punjab and others vs. Rafiq Masih', reported as 2015(4) SCC 344. He has further contended that in the alternative the petitioner is also entitled to the additional increment and in any case his pay should be fixed at par with his junior namely Dhoop Singh.

Per contra the learned counsel for the respondents has contended that in terms of the judgment of a Co-ordinate Bench in petition bearing CWP No.12657 of 2012 titled as 'Mahender Singh and others vs. State of Haryana and others' decided on 17.08.2015, the petitioner would not be entitled to the benefit of additional increment.

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

Indisputably, the petitioner had been granted the additional increment vide order dated 25.08.2009 w.e.f. 01.07.2007 and had been drawing the same, till the passing of the impugned order on 30.10.2014. Thus, the petitioner had drawn the additional increment for a period of over five years and his case would clearly fall in exception (iii) in the case of State of Punjab and Others versus Rafiq Masih (supra) wherein it was held that although it is permissible for an employer to effect the recovery from an employee on account of over payment but five exceptions were carved out wherein the recovery would be impermissible in law.

However, the petitioner would not be entitled to grant of additional increment as it has been held by Co-ordinate Bench of this Court in the case of 'Mahender Singh and others vs. State of Haryana and others'

(supra) that those who were drawing the functional pay scale of the post prior to the date of promotion on the strength of grant of ACP scales would not be eligible for additional increment under Rule 4.4 (a) (i) read with Rule 413 of the CSR.

Nonetheless, there is merit in the case of the petitioner for grant of pay at par with Dhoop Singh who is stated to be his junior.

Consequently, the petition is partly allowed and the impugned order dated 30.10.2014 (Annexure P-1) is set aside to the extent of recovery of amount from the petitioner. However, the pay of the petitioner would not be less than that being drawn by his junior namely Dhoop Singh.

The petition stands disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

NOVEMBER 21, 2016

Rajneesh

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO