

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.6109 of 2005(O&M)
Date of Decision: 20.09.2017

Harmeshwar Dass

--Petitioner

Versus

Pepsu Road Transport Corporation
& another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. D.D. Bansal, Advocate for the applicant/petitioner.

Mr. Anupam Singla, Advocate for the respondents.

TEJINDER SINGH DHINDSA.J

C.M. No.9702 of 2017

In view of the averments made in the application and by recording a no objection from counsel for the parties, the main writ petition is taken up on Board today itself for disposal.

Application is disposed of.

Main Case

Petitioner while serving as Conductor under the Pepsu Road Transport Corporation, instituted the instant writ petition in the year 2005 impugning the orders dated 18.1.2005 (Annexure P-1) and 9.2.2005 (Annexure P-2) and in terms of which recovery was sought to be effected in pursuance to a wrong fixation of pay having been rectified subsequently.

Counsel for the petitioner has taken a categoric stand that the petitioner is not assailing the action of the respondent Corporation as regards fixation of pay of the petitioner at the correct stage but he confines the scope of the instant petition only as regards recovery pursuant to the pay

having been fixed at the correct stage.

It is the contention raised by counsel that the benefit of the wrong fixation of pay and which was rectified subsequently was not on account of any misrepresentation or fraud at the hands of the petitioner. Such assertion is not rebutted by counsel for the Corporation.

The Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015 (1) R.S.J., 177*** had considered the issue of recovery from employees, where payments had mistakenly been made by the employer in excess of the entitlement and had culled out certain situations where recoveries at the hands of the employer was held to be impermissible in law. Para 12 of the judgement in ***Rafiq Masih's*** case (supra) would be relevant to the issue at hand and is reproduced hereunder:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class -III and Class-IV service (or Group ‘C’ and Group ‘D’ service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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

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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 recover."

Adverting back to the facts of the present case, it stands uncontroverted that the petitioner was a member of Group C service. Under such circumstances and in view of the dictum laid down in **Rafiq Masih's** case (supra) it would not be open for the respondent Corporation to effect recovery in the light of the impugned orders dated 18.1.2005 (Annexure P-1) and 9.2.2005 (Annexure P-2).

In view of the above, present writ petition is allowed. Impugned orders dated 18.1.2005 (Annexure P-1) and 9.2.2005 (Annexure P-2), are set aside.

It is further directed that the recovered amount, if any, in pursuance to the passing of the impugned orders would be refunded to the petitioner within a period of two months from today.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

20.09.2017
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No