

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11778 of 2015 (O/M)
Date of decision : 23.1.2017

Nand Kishore

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.S. Sidhu, Advocate, for the petitioner.

Mr. Nikhil K. Chopra, Additional A.G. Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH J. (ORAL)

The petitioner, while working as a Senior Assistant, retired from service on 31.3.2015. However, the petitioner was issued a show cause notice Annexure-P-1 on 2.3.2015, stating that he was wrongly granted proficiency step up, whereas the proficiency step up under the Assured Career Progression (in short 'ACP') Scheme was required to be given after calculating the service from the date of grant of senior/selection grade to the petitioner. Therefore, if some proficiency step is approved under the ACP Scheme, recovery of Rs. 85,919/- is made out from him. The petitioner filed the reply to the said show cause notice on 5.3.2015 (Annexure-P-2). In the meanwhile, the petitioner retired from service and while releasing the gratuity, a sum of Rs. 85,919/- was recovered and a formal order dated

CWP No. 11778 of 2015 (O/M)

6.4.2015 (Annexure-P-3) in this regard was passed after the retirement of the petitioner.

The factual position is admitted. The response of the respondents is that the proficiency step up of the petitioner was wrongly fixed. Infact, instructions dated 17.8.2012 (Annexure-R-2) were received from respondent No. 2 i.e. the Chief Conservator of Soil, Punjab, in which while relying upon the instructions of the Government, it was clarified that if the employees are benefitted by one or more increments at the time of providing senior scale or selection grade, in that case, the previous service prior to giving senior scale or selection grade is not to be counted for grant of ACP benefit. Accordingly, the pay of the petitioner was re-fixed with effect from 1.10.1980. For the period 1.10.1980 to 31.3.2015, the excess payment of Rs. 85,919/- was recovered from the gratuity of the petitioner.

I have heard the learned counsels for the parties and have also carefully gone through the file.

It comes out that in a case where according to respondents, the proficiency step up was fixed up from the wrong date, there was no fault on the part of the petitioner. The recovery was effected after the retirement of the petitioner and the order of recovery was also passed after the retirement of the petitioner. In these circumstances, the Hon'ble Supreme Court of India in State of Punjab and others etc. Versus Rafiq Masih (White Waster) etc., 215 AIR (SC) 696 has held that in such case, the State is not entitled to effect recovery. Therefore, applying the ratio of Rafiq Masih's case (supra), the impugned orders dated 6.4.2015 and 26.5.2015 (Annexures-P-3 and P-4 respectively) are hereby quashed. The recovery already effected from the petitioner is ordered to be refunded to the petitioner within two months from

CWP No. 11778 of 2015 (O/M)

the date of receipt of certified copy of this order, failing which respondents shall pay 9% per annum interest to the petitioner till the date of payment.

(KULDIP SINGH)
JUDGE

23.1.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No