

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

215

CWP No.12767 of 2015 (O&M)

Date of Decision: August 03, 2017

Jaspal Singh and others

....Petitioners

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. H.S. Saini, Advocate
for the petitioners.

Mr. T.P.S. Chawla, DAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

Challenge in the instant petition is to the orders dated 24.07.2014, 19.03.2014 and 13.01.2014 at Annexure P-3 (Colly) and in terms of which, the pay of the petitioners has been refixed at a lower stage and consequential recovery has been directed.

Brief facts would require notice.

Petitioners No.1 and 3 were initially appointed as Moth Testors whereas petitioner No.2 was appointed as Sericulture Operator under the Department of Agriculture, State of Punjab. Petitioners No.1 & 2 thereafter earned promotion to the post of Farm Managers on 13.11.2007 and petitioner No.3 was promoted as Senior Sericulture Promotion Officer vide order carrying even date

i.e. 13.11.2007.

It so transpires that prior to the date of their promotions, all the petitioners were already drawing a higher pay scale i.e. more than 4550 which would be the minimum pay fixed in the pay scale of 4550-7220 of the promotional post. This was on account of the grant of benefit under the Assured Career Progression Scheme having completed regular satisfactory service of 9 years and 14 years in a cadre. Subsequent to promotion pay of the petitioners was refixed after grant of one increment in pay scale of 4550-7220 and the next date of annual increment was kept as 01.01.2008. Petitioners were released the next annual increment on the promotional post w.e.f. 01.01.2008 by the respondent-department. The grant of annual increments on such basis continued upto the year 2014.

In terms of issuance of three separate orders dated 24.07.2014, 19.03.2014 & 13.01.2014 and which have been impugned in the instant petition, the date of grant of annual increment has been postponed by the respondent-department from 01.01.2008 to 01.11.2008. This has resulted in refixation of the pay of the petitioners to a lower stage as also a consequent recovery as reflected in the impugned orders.

It would be apposite to take note that when this writ petition came up for preliminary hearing on 01.07.2015, counsel for the petitioner had restricted his prayer only with regard to the

recovery sought to be effected in pursuance to the impugned orders at Annexure P-3(Colly). In other words, the validity of the decision of the respondent-department in refixing the pay of the petitioners to a lower stage, does not arise for consideration.

Insofar as , recovery is concerned counsel would submit that the date of annual increments as 01.01.2008 against the promotional post had been fixed by the department and in this regard, there was no mis-representation or concealment of facts at the hands of the petitioners. Further contended that the petitioners are holding Class-III posts and by applying the dictum laid down by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih, 2015(1) SCT 195***, recovery cannot be effected from the petitioners in pursuance to the impugned orders at Annexure P-3 (Colly).

In the written statement that has been filed on behalf of the respondents, the factual aspect depicted in the writ petition has not been disputed.

Learned State counsel would make an attempt to justify the action of the respondent-authorities to effect recovery by placing reliance upon the judgment of the Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh 2016(7) JT 409***. It was submitted that annual increments have been granted to the petitioners wrongfully from a particular date and it would always open for the department to correct a mistake that has

occurred and since the petitioners are not assailing the action of that refixation of pay at a lower stage, the consequential recovery would be wholly justified.

Counsel for the parties have been heard.

In the case of **Rafiq Masih's case (supra)** the Apex Court had examined the issue of recovery from employees and had culled out certain situations wherein recovery by the employer was held to be impermissible. Such situations were enumerated as follows:-

“(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 in cases where an 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.

(iv) 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.”

The petitioners herein would be covered in the category at (i) enumerated hereinabove as they admittedly are holding

Class-III posts. Furthermore, there is no rebuttal to the stand taken on behalf of the petitioners that the grant of increments on the promotional post i.e. from 01.01.2008 was not on account of any fraud or mis-representation at the hands of the petitioners.

Even the judgment of the Apex Court in **Jagdev Singh's case (supra)**, cannot be relied upon by the State to justify recovery in the light of the facts of the present case. In **Jagdev Singh's case**, a particular pay scale had been allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2001. Under the rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise. It is under such circumstances it was held that principles/parameters carved out in **Rafiq Masih's case**, would not apply as the officer concerned in **Jagdev Singh's case** had furnished an undertaking while opting for the revised pay scale and as such, he was bound by such undertaking.

On a specific query having been put, Mr. T.P.S. Chawla, DAG, Punjab, upon instructions from Senior Assistant, Surjit Singh, states that in the present case, the petitioners had not been called upon to give any undertaking and no such undertaking was furnished.

In view of the discussion above, while declining to

interfere in the impugned orders at Annexure P-3(Colly) it is directed that no recovery in pursuance thereto can be effected from the petitioners. It is further clarified that if any part recovery has already been made in pursuance to the orders at Annexure P-3(Colly) the same would be refunded to the petitioners within a period of one month from the date of passing of this order.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

03.08.2017
anju rani

***Whether speaking/reasoned* : Yes/No**
***Whether reportable* : Yes/No**