

Civil Writ Petition No.26318 of 2014

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

Sr. No.215

**Civil Writ Petition No.26318 of 2014
DECIDED ON: July 12, 2017**

NARESH KUMAR

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Satnam Preet Singh Chauhan, Advocate,
for the petitioner.

Ms. Sudeepti Sharma, Additional Advocate General, Punjab.

JASPAL SINGH, J.

By virtue of the instant civil writ petition preferred under Article 226/227 of the Constitution of India, petitioner has sought the issuance of writ especially in the nature of certiorari quashing the order dated March 13, 2012 (Annexure P-1) whereby the benefit of selection grade already given to the petitioner has been recovered from his Death-cum-Retirement Gratuity (DCRG) after his retirement illegally and arbitrarily and that too without issuing any show cause notice to him by the

Civil Writ Petition No.26318 of 2014

respondents; with further prayer to quash order dated June 14, 2013 (Annexure P-8) whereby his representation (Annexure P-2) has been dismissed and with further prayer for issuance of writ of mandamus directing the respondents to refund a sum of ₹1,57,531/- deducted from DCRG of the petitioner after his retirement which was earlier granted to him by the competent authority without any misrepresentation, fraud or deception on the part of the petitioner.

2. At the very outset of the arguments, it has been submitted by learned counsel for the petitioner that as far as grant of selection grade is concerned, petitioner has already retired from service on February 28, 2011 and it would not be justifiable to pass any order in this regard. However, deduction of amount granted to the petitioner on account of selection grade cannot be termed to be legal, valid and justifiable especially in the circumstances that there is nothing on record to suggest that petitioner has either misled or misrepresented or played any fraud or deception on the respondents for grant of selection grade. Hence, snatching away of the benefit granted to the petitioner by recovery of amount from his retiral benefits at their own without any notice cannot be said to be either legal or justifiable rather it is violative of the principles of law as well as natural justice. Moreover, case of the petitioner is squarely covered by the judgments rendered by this Court in case “*Madan Lal vs. State of Punjab, 2003 (1) RSJ 732; Lal Singh vs. State of Punjab & ors., 2003 (1) RSJ 746; Maha Singh Sinhmar vs. State of Haryana, 1995 (1) RSJ 643 and Budh Ram & ors. vs. State of Haryana & ors. 2009 (3) SCT 333*”, in which it has been specifically held that in case employees who are recipient of the

benefit extended to them on an erroneous interpretation or application of any rules, regulations, circulars or instructions and employees have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation or deception to obtain grant of such benefit, benefit so extended may be stopped for future but amount already paid to the employees cannot be recovered from them. The relevant paragraph of aforesaid judgment is extracted below:-

“It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount simply because on a true and correct interpretation of the rules, such a benefit was not due. It does not require much imagination to say that additional monetary benefits going to an employee may not always result in accumulation of his resources and savings. Such a

benefit may often be utilized on smaller luxuries of life which the employee and his family may not have been able to afford had the benefit not been extended to him. The employees can well argue that if it was known to them that the additional benefit is only temporary and would be recovered back from them, they would not have committed themselves to any additional expenditure in their daily affairs and would have cut their coat according to their cloth. We have, therefore, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be recovered from them.”

3. Adverting to the facts of the instant case, no malafide deception, fraud or misrepresentation can be attributed to the petitioner when he was granted selection grade but recovery of said amount by the respondents at the time of his retirement is illegal. Thus, respondents are bound to refund the amount so deducted to the tune of ₹1,57,531/-.

4. At this juncture, it has been submitted by learned State counsel that in fact recovery was ordered in the year 2007-2008 itself when amount was deducted with regard to grant of selection grade but on account of connivance of the petitioner with the employees of respondents i.e. Irrigation Department, letter was not put up and petitioner continue to enjoy the benefit of selection grade. If it was the situation, employees of the respondents are at fault who had allegedly connived with petitioner and

Civil Writ Petition No.26318 of 2014

suppressed the letter with regard to recovery of amount or discontinuation of benefit of selection grade given to petitioner. If, respondents think fit they can initiate an inquiry into the matter and take an appropriate action against employees concerned and pass an order for recovery of the amount.

5. While parting with aforesaid order, respondents are directed to make payment of amount of ₹1,57,531/- within a period of three months' from the date of receipt of certified copy of this order and on failure to make the payment within aforesaid stipulated period of three months', it would entail interest @ 12% per annum from the date of illegal deduction of the amount till its actual payment.

6. Disposed of.

July 12, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No