

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.7256 OF 2015

DATE OF DECISION: JULY 19, 2017

Maninder Singh son of S.Boorh SinghPetitioner

Versus

State of Punjab & othersRespondents

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

Present: Mr.VK Sharma, Advocate for the petitioner.

Ms.Monica Chhibber Sharma, Senior Deputy Advocate
General, Punjab.

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TEJINDER SINGH DHINDSA, J.

Petitioner, who is serving on the post of Junior Engineer under the Public Works Department (B&R Branch), State of Punjab, has filed the instant petition impugning the order dated 9.3.2015, Annexure P6, and in terms of which the annual increments that had been granted to him, have been withdrawn.

2. Perusal of the impugned order would reveal that upon withdrawal of the annual increments, pay of the petitioner has been re-fixed at a lower stage and directions have been issued to the concerned Divisional Accounts Officer to effect the necessary recovery.

3. The writ petition had come up for preliminary hearing on 21.4.2015 and while issuing notice of motion, recovery of the

amount already paid to the petitioner had been stayed.

4. Mr.VK Sharma, learned counsel representing the petitioner, makes a statement during the course of hearing today that he is confining the challenge to the impugned order dated 9.3.2015, Annexure P6, only as regards recovery. In other words, the petitioner is not assailing the action of the respondent-Authorities in having withdrawn the annual increments that had been granted to him and the consequent re-fixation of pay at a lower stage.

5. In support of the limited relief sought in the petition, learned counsel would argue that the annual increments have been granted to the petitioner by the respondent-Department of their own accord and not on the basis of any false representation having been made by the petitioner. It is argued that there was no concealment of facts on his behalf. Precise submission raised is that if no fraud and mis-representation is attributed to an employee, recovery of financial benefits already granted would not be permissible.

6. Per contra, learned State counsel would submit that the basis of withdrawal of increments has been disclosed in the impugned order itself i.e. the petitioner while serving as Junior Engineer had not passed the departmental examination. It is submitted that since the petitioner was not entitled to the increments and since increments had been granted erroneously, it was always open for the State to have rectified its mistake in terms of withdrawal of increments. Further contended that the impugned order dated 9.3.2015, Annexure P6, has been passed

after adhering to the principles of natural justice inasmuch as a show cause notice dated 21.1.2015 vide memo No.3439, Annexure P4, had been duly served upon the petitioner and it is only thereafter the impugned order was passed.

7. Learned counsel for the parties have been heard.

8. Facts are not in dispute. Concededly, it was only upon qualifying the departmental examination, the petitioner was entitled to the financial benefits of annual increments. Petitioner has not qualified the departmental examination. Be that as it may, increments over a certain period of time were released in his favour. The assertion on the part of the petitioner that the release of increments was not on account of any misrepresentation or concealment of facts on his part has gone un rebutted.

9. The short question that arises is that under such admitted factual premise would recovery be permissible?

10. In the considered view of this Court, such limited issue of recovery stands settled in favour of the petitioner in the light of the observations made by the Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) R.S.J., 177*. The issue dealt with by the Apex Court was as regards recovery from employees where payment had mistakenly been made by the employer in excess of their entitlement and had culled out certain situations where recovery at the hands of the employer was held to be impermissible in law. Para 12 of the judgment in *Rafiq Masih's* case (supra) would be relevant 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, summarize 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 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 recovery."

11. The petitioner, concededly, is holding a group 'C' post. The limited prayer raised on behalf of the petitioner that recovery in the light of the impugned order, dated 9.3.2015, cannot be effected, is covered by the eventualities/situations laid down in *Rafiq Masih's* case (supra).

12. For the reasons recorded above, the present petition is partly allowed. The impugned order dated 9.3.2015, Annexure P6, is upheld to the extent of withdrawal of increments and re-fixation of the pay of the petitioner at a lower level. However, it is held that recovery, pursuant to the impugned order dated 9.3.2015, cannot be effected. Ordered accordingly.

13. Petition disposed of.

JULY 19, 2017

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note:	<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
	<i>Whether Reportable?</i>	<i>Yes/No</i>