In the High Court of Punjab and Haryana at Chandigarh.

LPA No. 2202 of 2017 (O&M) in
CWP No.6109 of 2005
Date of Decision:- November 17, 2017

Pepsu Road Transport Corporation & another ....**Appellants**

Versus

Harmeshwar Dass ....**Respondent**

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Vishal Moudgill, Advocate.
Counsel for the appellant.

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Gurvinder Singh Gill, J.

1. Present intra-court appeal, is directed against judgement of Single Bench of this Court dated 20.9.2017, whereby writ petition was allowed and impugned orders dated 18.1.2005 and 9.2.2005 were set aside.

2. The writ petitioner/respondent, who was working as a conductor with the Corporation filed writ petition, assailing orders dated 18.1.2005 and 9.2.2005 passed by Corporation, vide which excess payment made to him on account of wrong fixation of pay, had been ordered to be recovered.

3. While arguing before Single Bench, the learned counsel for respondent, while taking a categoric stand that he does not assail re-fixation of pay, restricted his prayer to recovery of excess payment pursuant to re-fixation only. It was

contended that since wrong fixation was not on account of any misrepresentation or fraud on his part, therefore no recovery could be effected from him. No written statement was filed by the Corporation. Thus, the Corporation nowhere took a stand that wrong fixation of pay was on account of any act or omission on the part respondent or that he had ever misrepresented or committed any fraud resulting in wrong fixation of pay.

4. The Single Bench, while relying upon a judgement of Hon'ble Supreme Court in *2015(1) RSJ 177 State of Punjab vs. Rafiq Masih,* held that it was not open to Corporation to effect recovery on the basis of the impugned orders since the petitioner was a member of Group 'C' service.

5. The learned counsel for the appellant Corporation while assailing the impugned judgement contended that the Corporation is fully competent and well within its rights to effect recovery of excess payment made to an employee on account of wrong calculation and that 'Doctrine of unjust enrichment' is applicable to the facts of the present case as public money can not be allowed to be squandered away. It has also been contended that since the respondent did not avail of remedy of appeal against impugned order before approaching this Court, therefore the writ petition in any case was liable to be dismissed on that score as well.

6. We have considered the aforesaid submissions. As regards the position of law regarding recovery of excess payment is concerned, the same stands authoritatively settled by Hon'ble the Supreme Court in *Rafiq Masih's* case (Supra). The relevant extract from which reads as follows:

"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 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."

7. It is not disputed that the respondent was a member of Group 'C' service. It is also not in dispute that refixation made in year 2005 dates back to 26 years and pertains to period from 1979 onwards. It would certainly be unfair and harsh to ask an employee to pay excess amount received during last 26 years, especially when he had not contributed in any manner for wrong fixation of pay, and being a member of Group 'C' service would not have much savings and resources.

8. As regards the contention regarding the petitioner not having availed the remedy of appeal, the learned counsel has referred to Appendix B to PRTC Rules, annexed as Annexure A-1 to contend that the respondent ought to have filed appeal before Additional Managing Director rather than approaching this Court. Having perused Annexure A-1, we find that the appellate authorities mentioned therein pertain to filing appeals against orders imposing penalty. The impugned orders are not in the nature of imposing any penalty. The learned counsel has not been able to show any provision in the rules providing for statutory appeal against such like orders. In any case, no such specific stand was ever taken by the appellant while contesting the writ petition. In fact the Corporation did not file any written statement. It is well settled that when the plea of alternate remedy being available is not taken while contesting writ petition, the same shall be deemed to have been given up

9. For the reasons mentioned we do not find any error in the order passed by the learned Single Bench. The appeal is accordingly dismissed. As there is no merit in the appeal, even application for condonation of delay is also dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

November 17, 2017
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No