

CWP No.11824 of 2001 (O&M)

Ankur Goyal
2018.06.08 12:59
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.623

**Civil Writ Petition No.11824 of 2001 (O&M)
DECIDED ON: March 21, 2018**

KARTAR SINGH

..PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vikas Kuthiala, Advocate,
for the petitioner.

Mr. Ram Tilak Redhu, Deputy Advocate General, Haryana.

JASPAL SINGH, J.

By virtue of the instant civil writ petition, preferred under Articles, 226/227 of the Constitution of India, petitioner-Kartar Singh has sought issuance of a writ in the nature of Certiorari quashing the order dated 25.01.2001 (P-1) as a consequence of which respondents have issued instructions regarding initiation of recovery of amount paid in the pay scale of 4100-5300 to him vide letter dated 02.06.1989 (P-3) under the garb of

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order dated 20.11.2000 passed by the Hon'ble Apex Court in Civil Appeal No.6585/2000 (P-8) WITH FURTHER prayer to stay the operation of the letter dated 25.01.2001 (P-1) for recovery of payment made in excess to him w.e.f. 01.05.1989 during the pendency of this writ petition and direction to the respondents to continue to pay the pension as per the last pay drawn by him at the time of retirement subject to the final result of this writ petition.

2. Brief facts of the case giving rise to the instant case are that petitioner was appointed as Junior Engineer in Irrigation Department on 09.06.1961 and was promoted as Sub Divisional Officer on ad hoc basis vide order dated 29.12.1979. He stood retired on 30.11.1998. However, prior thereto, his services as Sub Divisional Officer were not regularized. The State of Haryana had revised the pay scale of its employees w.e.f. 01.01.1986. At the time the question of further improvement in the pay scale of Engineers and Doctors was also considered and Government had introduced Senior Scale of Rs.3000-4500 and Selection Grade of Rs.4100-5300 on completion of five years and 12 years service respectively w.e.f. 01.05.1989 vide its letter No.6/38/3PR (Finance Department)-87 dated 02.06.1989. Subsequently, the said instructions were modified and substituted by another letter dated 16.05.1990, wherein the conditions of regular satisfactory service as well as restriction of 20% of the posts of selection grade were incorporated. The petitioner was granted the benefit of aforesaid instructions dated 02.06.1989 who availed the pecuniary benefits and subsequently, after a restriction of 20% of the posts for the selection grade were incorporated, the excess payment made to the petitioner were ordered to be recovered vide order dated 25.01.2001 (P-1) and it was only

due to the said reason, petitioner approached this Court by way of instant petition.

3. The contention of learned counsel for the petitioner is that the controversy involved in the instant case has already been set at rest by this Court while disposing of CWP No.8172 of 1990, captioned as ***H.R. Dhanjal vs. State of Haryana***, in which, Notification dated 02.06.1989 and subsequent Notification dated 16.05.1990 restricting the selection grade to the extent of 20% were under challenge and the instant petition can be conveniently disposed of in terms of judgment rendered in ***H.R. Dhanjal's case (Supra)*** as well as judgment rendered in CWP No.7317 of 2001 captioned as ***S.K. Khosla & ors. Vs. State of Haryana & ors.*** decided on 20.05.2009 along with five other civil writ petitions involving the identical controversy.

4. This Court has gone through the judgment rendered in ***S.K. Khosla's case (supra)*** and is of the opinion that controversy involved in the instant petition stands clinched. The operative part of the aforesaid judgment reads as under:-

“In my opinion, this is not a case where there are two such distinctive categories. In the situation, where such protracted litigation was already in progress with regard to the eligibility of the petitioners to draw pay scale of Rs.4100-5300, it cannot be held that the petitioners did not have knowledge that payments received were in excess or at least that it was a matter of controversy. It may be noticed that a similar argument was repelled by a Division Bench of this Court in Dr. Rajvir Singh and others' case (supra). In my opinion, the case of the petitioners is

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covered by the direction given by this Court in H.R. Dhanjal's case (supra). Consequently, this writ petition is disposed of in the same terms as CWP No.8172 of 1990, H.R.Dhanjal vs. State of Haryana.”

5. In the light of the observation reproduced in the aforesaid paragraph, an amount already received by the petitioner is not recoverable in pursuance of order dated 25.01.2001 (P-1). Rather, aforesaid order dated 25.01.2001 (P-1) stands set aside/quashed.

6. Considering the case of the petitioner from another angle also, respondents are not entitled to the recovery of alleged excess amount paid to the petitioner because it is a stand taken in the written statement dated 12.12.2001 by the respondents that instructions/letter dated 24/25/01/2001, which has been challenged through instant petition has since been withdrawn by the Finance Department. Thus, in the totality of the facts and circumstances, instant petition is allowed. Consequently, order dated 25.01.2001 (P-1) stands quashed with further direction to the respondents not to recover any such amount.

7. No order as to costs.

March 21, 2018

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes/No