

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.17039 of 2018

Date of Decision:-09.10.2018

Nirmal Singh.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ripudaman Singh Sidhu, Advocate for the Petitioner.

Mrs. Anu Chatrath Kapoor, Additional Advocate General,
Punjab assisted by Mr. Vikas Kaushal, Junior Assistant,
Office of DEO (EE), Sangrur.

JASWANT SINGH, J.(ORAL)

Petitioner was appointed on Adhoc basis as a Junior Basic Teacher (JBT) on 30.03.1979 by the Department of School Education. The services of the petitioner were regularized w.e.f. 1.4.1985. He was promoted as Head Teacher on 7.10.2008 and further promoted as Centre Head Teacher on 15.07.2010.

By filing the present writ petition, petitioner has laid challenge to the order dated 4.6.2018 (P-2), whereby a recovery for a sum of Rs.2,48,760/- has been ordered subject to deduction of Rs.12,500/- per month in 20 installments towards 86 days of excess medical leave availed and incorrectly sanctioned by the Department.

Counsel for the petitioner by relying on the Full Bench

judgment of **Budh Ram & Ors. Vs. State of Haryana & Ors. (2009)3 SCT 333** as also of the Hon'ble Supreme Court in **State of Punjab & Ors. Vs. Rafiq Masih** states that no recovery can be made since there was no representation or fraud committed by the petitioner in availing the aforesaid excess benefit.

On the other hand, learned State Counsel by referring to Rule 8.119 (a) of The Punjab Civil Services Rules Volume I Part I as reproduced in the written statement submits that the commuted medical leave during the entire service is limited to a maximum of 240 days and concededly the petitioner has availed medical leave for a period of 86 days in excess over and above 240 days. Hence the excess amount is liable to be recovered. It is further argued that the ratio of the cited judgments is not available to the petitioner as he has not yet retired and otherwise also holds a higher post capable of making payment.

After hearing Counsel for the parties, present petition is held to be devoid of any merit.

Concededly the grant of commuted leave is governed by Rule 8.119 of The Punjab Civil Services Rules Volume 1 Part 1. The extracted portion of the same reads as under:-

- “ (i) ***Commuted leave during the entire service shall be limited to a maximum of 240 days.***
- (ii) *When commuted leave is granted, twice the amount of such leave shall be debited against the half pay leave due;*
- (iii) *Half pay leave upto a maximum of 180 days shall be allowed to be commuted during the entire service where such leave is utilized for an approved course of study certified to be in the public interest by the leave sanctioning Authority.*

It is also not denied that the petitioner has already availed

commuted leave of 326 days on medical grounds in different spells from time to time, therefore, the case of the petitioner is squarely governed under the aforesaid Clause and the payments made for the excess commuted leave are liable to be refunded/deducted . This Court is in agreement with the State Counsel that the cited judgment do not advance the case of the petitioner. The department in order to facilitate the recovery has already adopted the method of recovery by way of easy installments (@ Rs.12,500/- pm) as admittedly the salary of the petitioner is more than Rs.70,000/- per month. There is no statutory provision which prohibits recovery of excess amount paid to an employee and it is only the judgments passed by the Courts based on equitable grounds which provide protection from recoveries to lowly paid Class of employees and retirees.

It is further apparent that before making the recovery a show cause notice was issued for 97 days extra leave whereas factually it was found to be 86 days.

In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

However, the deductions shall be made only as per the extra 86 days leave, which would come to Rs.2,18,501/- instead of Rs.2,48,766/- provided in the show cause notice.

(JASWANT SINGH)
JUDGE

October 09, 2018

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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>