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

CWP-24774-2014

Date of decision-14.09.2018

Mohammad Yaseen

....Petitioner

Vs.

**Secretary to Govt.Punjab, Department of Local Bodies,
Mini Secretariat, Chandigarh and others**

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Mukesh Arora, Advocate for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab.

Mr. B.S.Sidhu, Advocate for respondent No.4.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of the order dated 13.02.2013 (Annexure P-1), whereby, an amount of ₹57,417/- has been ordered to be recovered from him on the basis of order dated 18.10.2012 (Annexure P-2) issued by respondent Nos.3 and 4 whereby the dates of grant of proficiency step up and ACP had been changed; and for issuance of a direction to the respondents to make payment of last instalment of arrears of pay fixation in the revised pay scale as per government instructions contained in letter dated 27.05.2009.

It is contended that the amount paid in excess, if any, is not a result of any fraud or misstatement on the part of the petitioner, therefore, the order of recovery is arbitrary and illegal. He cites a judgment passed by

this Court titled as “**Budh Ram and others Vs. State of Haryana and others**” 2009 (3) SCT (333) and a judgment passed by Hon'ble the Supreme Court in “**Chandi Parsad Uniyal and others Vs. State of Uttrakhand and others**”, AIR 2012(SCW) 4742.

It is further contended that the petitioner is entitled to exercise his option for grant of benefits of ACP as per letter dated 03.11.2006 (Annexure P-3) in the changed circumstances of re-fixation of his pay by changing the dates of ACP already granted to the petitioner to his disadvantage.

On the other hand, learned State counsel submits that the petitioner had become eligible for 16 years proficiency step up on 07.01.2003 whereas he was erroneously granted this benefit on 07.01.1996. Similarly, the benefit of 24 years' proficiency step up became due to him on 07.01.2011, however, the petitioner had already retired on 31.12.2010. Whereas he was erroneously granted proficiency step on 07.01.2002. He was also granted 32 years' proficiency step up erroneously on 07.01.2010. Therefore, the impugned orders are liable to be sustained.

Heard.

It is not in dispute that the benefit of proficiency step-up was given to the petitioner without there being any misrepresentation or fraud on his part. In Budh Ram's case (supra), it has been held as under:-

“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.”

Similar view has been taken in “**State of Punjab Vs. Rafiq Masih**”, 2015(1) S.C.T. 195,, which reads as under:-

“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.*

The petitioner retired on 31.12.2010, whereas, the impugned recovery was ordered against the petitioner on 13.02.2013. Thus, the case of the petitioner is squarely covered by the ratio of law as laid down in Rafiq Masih's case (supra). The amount paid in excess, if any, is not on account of any lapse or misrepresentation on the part of the petitioner; it is the department which erred in granting him such a benefit. Therefore, keeping in view the above, the impugned order, Annexure P-1, to the extent of effecting recovery to the tune of ₹57,417/-, is set aside.

The respondent(s) are directed to pay the entire amount recovered from the petitioner along with interest at the rate of 6.5% per annum from the date of recovery till actual payment.

As regards the second prayer of the petitioner for release of arrears is concerned, the same had been withheld by respondent No.4 on the wrong premise of recovery due from the petitioner. In these circumstances, the petitioner is held entitled to that last instalment of 40% of the said arrears alongwith interest @ 6.5% per annum.

Allowed in the above terms.

(JITENDRA CHAUHAN)
JUDGE

14.09.2018

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No