HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CM-5111 to 5113-LPA-2016 in/and
LPA No.2448 of 2016 (O&M)
Date of Decision: 09.08.2018

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State of Punjab & Ors. ...Appellants

VS.

Amrik Singh & Ors. ... Respondents

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Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Sudip Ahluwalia

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Present: Mr. Rajesh Bhardwaj, Sr.DAG Punjab

Mr. MK Dogra, Advocate
for respondents No.1 to 14, 17, 19, 20, 22to25, 267 to 29, 31to38, 40, 42to47, 50, 52 to 55 in LPA-2448-2016
for all the respondents (in LPA-108&409-2017)

Mr. CM Chopra, Advocate
for the respondents in LPA-77&109-2017

Mr. Natha Singh, authorized representative for UOI

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SURYA KANT J. (Oral)

(1) This order shall dispose of LPA Nos.2448 of 2016 and LPA Nos.408,409,77,108,109&444 of 2017 as all the appeals have been preferred by the State of Punjab against a common order passed by learned Single Judge dated 16.03.2016 whereby the recovery of excess amount from the respondents has been set aside.

(2) All the appeals are accompanied with the applications under Section 5 of the Limitation Act for condonation of delay of 245 days or more. In the lead case i.e. LPA No.2448 of 2016, it is averred in the application for condonation of delay that since the judgment under appeal involved financial implications, hence the matter was referred to Finance Department on 11.04.2016 to which the Department of Finance sent its response on 10.06.2016. The Administrative Department again referred the

matter back to O/o CE/RSDC on 15.06.2016 and after exchange of correspondence, the Administrative Department eventually sent the case to the office of Advocate General, Punjab on 26.07.2016 for filing the accompanying appeals. It is further averred that the office of Advocate General, Punjab gave second opinion on 30.11.2016, recommending to file appeals. The appeals were thereafter filed on 16.12.2016. It may thus be seen that the Administrative Department did not want to file appeal(s) rather sought approval of the Finance Department to implement the order of learned Single Judge but due to objection raised by the Finance Department and after intra-departmental correspondence that the appeals were filed after a delay of almost 8 months. There is no satisfactory explanation as to why the authorities could not act promptly to file the appeals at the earliest when the prescribed time limit is 30 days only. We are thus not convinced by the explanation given in the application for condonation of delay.

(3) Regardless thereto, we have heard learned counsel for the parties on merits and have gone through the record.

(4) Shorn of the details, suffice it to mention that the respondents are mostly Group 'D' and Group 'C' employees working was Mechanics, Masons and Drivers etc. in the appellant-Department. Some of them have retired from service. The respondents were granted higher pay-scales being ITI Diploma holders but the same was later on withdrawn and all of them were uniformly granted the pay-scales admissible to semi-skilled staff. The respondents challenged the re-fixation of their pay in a bunch of writ petitions which were partly allowed by a Division Bench of this Court on 27.03.2009 holding as follows:-

> *"In view of the said fact, we partly allow the present writ petitions by declaring that the refixation of salary from the date i.e. prior to the decision of the Committee, is illegal and void. Since the impugned orders were stayed in few of the writ petitioners, the workmen must have been paid higher pay scale. Therefore, in respect of the employees, who are petitioners in the aforesaid cases, the respondents shall be at liberty to take appropriate decision in respect of the recovery of the amount so paid to avoid hardship and undue burden at this stage, keeping in view the interim orders passed by this Court."*
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> [emphasis by us]

(5) The above-stated order was upheld by the Hon'ble Supreme Court also.

(6) It may thus be seen that while re-fixation of pay was upheld by this Court, the appellant-authorities were granted liberty to take appropriate decision to effect recovery of the amount already paid "*to avoid hardship and undue burden*". The appellants, however, decided to effect recovery and passed the consequential orders, which were again challenged by the respondents before this Court. Learned Single Judge vide judgment under appeal has set aside those orders primarily on the strength of decision of Hon'ble Supreme Court in ***State of Punjab vs. Rafiq Masih (White Washer) & Ors. (2014) 8 SCC 883***.

(7) The question which falls for consideration in these appeals is thus whether the appellant-authorities are justified in ordering recovery of the excess payment of salary made to the respondent-employees?

(8) It appears to us that the spirit and object of the observations made by this Court while upholding re-fixation of pay was that before effecting recovery from the respondents, the authorities would consider the likelihood of '*hardship and undue burden*' on the respondent-employees. Unfortunately, this aspect has not been kept in view by the appellants while deciding to effect recovery. Meanwhile, the Apex Court in ***Rafiq Masih*** (supra) has ruled that the recovery of excess payment can be effected as the employees cannot be allowed to take undue advantage of wrong fixation of pay. Nevertheless, the Hon'ble Supreme Court has carved out some exceptions in favour of retirees or the employees belonging to 'C' or 'D' Groups, especially when the employees are not guilty of concealment of facts at the time of fixation of pay. There is no gainsaying that the higher technical pay scale was granted to the respondents by taking a conscious decision and the said pay scale was subsequently withdrawn and they were put into the category of semi-skilled staff, again by taking a conscious policy decision. The employees had no say in both the decision-making processes. At this juncture, when some of them have retired and others are at the fag end of their career with multiple family responsibilities, it would cause extreme hardship if recoveries of, what had been already paid to them are allowed to be effected. The issue, to this extent, appears to have been answered in favour of the respondents in ***Rafiq Masih*** (supra) which has been relied upon by learned Single Judge.

(9) The contention that the principles laid down in ***Rafiq Masih*** will apply 'prospectively' cannot be accepted as no such limitation has been imposed by the Hon'ble Supreme Court. Taking into consideration the current status of the respondents, namely, that many of them have retired or

are near retirement and the fact that they are holding Group ‘C’ & ‘D’ posts, we are satisfied that no interference in the discretion exercised by learned Single Judge is called for.

(10) Dismissed.

(Surya Kant)
Judge

09.08.2018
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***No***