

(101) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.3855 of 2005
Date of decision : 03.07.2019

Krishna Kumari and others

.... Petitioners

Versus

State of Haryana and others

.... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. R.K. Chaudhary, Advocate for the petitioners.
Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. WALIA, J. (ORAL)

[1] Challenge by the petitioners who are JBT Teachers is to order, Annexure P-2 dated 22.08.2003 passed by respondent No.2 directing refixation of pay of employees after recovering the benefit erroneously granted and over payment recovered on revision of pay-scales w.e.f. 01.01.1996 in terms of the Revised Pay Rules, 1998as also to notice, Annexure P-3 dated 03.02.2004 issued by respondent No.6 i.e. a show cause notice regarding refixation of pay scale and for recovery of the excess payment on the ground that pay of petitioner No.1 was fixed @ ₹ 5750/- in the revised pay scale of ₹ 5450-8000 w.e.f. 01.01.1996, but as per letter No.6/ 149/ 2002-4PR (FD) dated 22.08.2003, her pay worked out to ₹ 5450 in the pay scale of ₹ 5450-8000 w.e.f. 01.01.1996. Petitioner No.1 was informed that as per Government instructions, her pay was to be refixed again and it was proposed to recover the excess amount given to her.

[2] Notices similar to Annexure P-3 are claimed to have been issued to the other petitioners. A copy of reply Annexure P-4 dated

17.02.2004 filed by one of the petitioners (i.e. Smt. Manohar Devi - petitioner No.3) to the show cause notice has been attached with a prayer for supplying of copy of order Annexure P-2, dated 22.08.2003 in order to enable her to file an effective reply.

No reply was filed thereafter, instead the writ petition was filed on the ground that copy of order Annexure P-2 dated 22.08.2003 had not been supplied to the petitioners and there was every apprehension that recovery would be effected from the salary of the petitioners.

[3] Stand in the writ petition is that the petitioners had never represented or demanded the scale/grade/service benefit and the same was granted/released by the respondents on their own and further that there was no allegation against any of the petitioners that they had ever misrepresented or claimed the said benefit.

[4] Learned counsel for the petitioners contends that in the circumstances, especially in view of the fact that the petitioners are Group 'C' employees, recovery of the payment mistakenly made in excess was impermissible in the eyes of law in view of the decision of Hon'ble the Supreme Court in ***State of Punjab and others etc. v. Rafiq Masih (White Washer) etc., 2015 (2) SCC (Civil) 608.***

[5] Learned Sr. DAG does not dispute that there is no misrepresentation by the petitioners and that the benefit of pay-scale was granted to the petitioners by the respondents at their own level as also that the petitioners are Group 'C' employees belonging to Class III service.

[6] I have considered the submissions of learned counsel for the parties.

[7] Admittedly, the petitioners are Group 'C' employees belonging to Class III service and the fixation of pay of the petitioners in the revised

pay scale of ₹ 5450-8000 w.e.f. 01.01.1996 was carried out by the respondents on their own without any claim or misrepresentation by the petitioners. Thereafter, respondents sought to make recovery on account of excess payment after refixing the pay in the pay-scale of the petitioners and for that purpose issued show cause notices to them.

[8] As has been noticed above that the petitioners are Class III employees, therefore, in view of the decision of Hon'ble the Supreme Court in Rafiq Maish's case (Supra), recovery of payment mistakenly made to the employees in excess of their entitlement is impermissible. Relevant extract of the same is reproduced 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, summarize 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."

[9] In the light of the position as noted above, recovery notice i.e. Annexure P-3 dated 03.02.2004 is quashed and it is held that the excess payment made to the petitioners is not recoverable.

[10] Accordingly, writ petition is allowed in the aforementioned terms.

03.07.2019
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(B.S. Walia)
Judge

1. Whether speaking/reasoned: Yes/No.

2. Whether reportable : Yes/No.