IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-701-2005 (O&M)

Madan Lal Gupta ....Petitioner

Versus

State of Punjab and another ..Respondents

2. CWP-11990-2005

Baldev Singh Mangat ....Petitioner

Versus

State of Punjab and another ..Respondents

Date of decision: - 17.09.2019

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr. Vipin Mahajan, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

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HARSIMRAN SINGH SETHI, J. (ORAL)

By this common order, above-mentioned two Civil Writ Petitions are being disposed of in the light of common question of law and similar facts involved. For the sake of convenience, the facts are being extracted from CWP-701-2005 titled 'Madan Lal Gupta Vs. State of

Punjab and another'.

In CWP-701-2005, the grievance which has been raised by the petitioner is that his pay has been refixed and reduced and upon refixation, the respondents have ordered recovery of the excess amount from him. The order of refixation dated 29.11.2004 (Annexure P-11) is under challenge in the present writ petition.

The facts stated in the writ petition are that petitioner was appointed as a Sectional Officer (re-designated as Junior Engineer) on 19.01.1968 and thereafter, he was promoted as a Sub-Divisional Engineer w.e.f. 15.04.1977. While working on the post of Sub-Divisional Engineer, though, he was eligible for promotion as an Executive Engineer, but keeping in view the limited number of vacancies in the cadre of Executive Engineer, he could not be promoted.

As per the instructions issued by the Finance Department, Government of Punjab dated 02.06.1989, employees, who though were eligible for promotion to the post of Executive Engineer, but were not able to get the said promotion due to the limited number of vacancies, were entitled for a higher pay-scale after rendering 8/18 years of satisfactory service. Keeping in view the said notification issued by the Government of Punjab, petitioner was granted a higher pay-scale of ₹3700-5300 w.e.f. 15.04.1995 on completion of 18 years of satisfactory service as a Sub-Divisional Engineer. The said order was passed on 28.04.1997 granting the petitioner higher pay as well as the designation of Deputy Executive Engineer w.e.f. 15.04.1995.

The Government of Punjab revised the pay-scales of its employees w.e.f. 01.01.1996. The Sub-Divisional Engineers were given the pay-scale of ₹7880-13500 (at the entry stage with start of ₹8000); pay-scale of ₹10025-15100 after a period of 4 years of service; pay-scale of ₹12000-15500 after a period of 9 years of service; and pay-scale of ₹14300-18150 after a period of 14 years of service. As the petitioner had 14 years of service to his credit as on 01.01.1996, he was granted the benefit of revised pay-scale of ₹14300-18150. The order was passed to this effect on 01.09.1998 granting the benefit to the petitioner w.e.f. 01.01.1996.

The Government of Punjab issued a notification on 17.04.2000 giving guidelines/eligibility for the grant of the benefit of Assured Career Progression Scheme. As per the said notification, the benefit of Assured Career Progression Scheme was only available to the direct recruitees and not to the promotees and further that an employee has to have a good record so as to become eligible for the grant of the benefit of the Assured Career Progression Scheme. "Good record" was also defined to mean that an employee was to have at least 50% of the all the ACRs as good and out of last three Annual Confidential Reports, two reports should be good in order to become eligible for the grant of the benefit under the Assured Career Progression Scheme.

Petitioner retired on attaining the age of superannuation on 30.04.2004. After the retirement, the retiral benefits which he was entitled in view the service rendered, were not immediately released to him and the same were released in July, 2004. Further, after the retirement, a show-cause notice was issued to the petitioner on 28.07.2004 that benefit of the pay-scale of ₹14300-18150, which has been given to him on completion of 14 years of service in the cadre of Sub-Divisional Engineer w.e.f. 01.01.1996 under Assured Career Progression Scheme was not correct as his 50% ACR's were not good, which was required for the grant of the said benefit and as he was wrongly extended the benefit of higher pay-scale under Assured Career Progression Scheme after rendering 14 years of service, a proposal was moved to refix his salary and recover the excess amount paid on account of wrong fixation of the salary. Petitioner filed the reply to the said show-cause notice, defending that the record of the petitioner was good enough to grant him the benefit, which was extended to him in the cadre of Sub-Divisional Engineer after rendering 14 years of service by granting him the pay-scale of ₹14300-18150 under Assured Career Progression Scheme.

Keeping in view the reply filed, respondents passed an order dated 29.11.2004 (P-11) refixing the salary of the petitioner by withdrawing the pay-scale of ₹14300-18150 which was granted to the petitioner under Assured Career Progression Scheme after rendering 14 years of service in the cadre of Sub-Divisional Engineer and his pay was refixed by reducing his basic salary by ₹2200/-. The said order dated 29.11.2004 (P-11) has been impugned in the present writ petition.

The claim of the petitioner is that after the retirement, his pay should not have been refixed and further, in any case, no recovery can be effected from a retired employee even if it is assumed for the sake of arguments that the benefit, which is being sought to be withdrawn, was wrongly extended to the petitioner as per the settled principle of law.

Upon notice of motion, the respondents have filed the reply.

In the reply, respondents have defended their action. They have stated that the pay-scale of ₹14300-18150 w.e.f. 01.01.1996 on completion of 14 years of service in the cadre of Sub-Divisional Engineer was wrongly granted to the petitioner as his record was not good as required under instructions dated 17.04.2000, which was one of the requirement for the grant of the said benefit.

Counsel for the respondents argues that before the benefit of Assured Career Progression Scheme was extended to the petitioner, the instructions had already been issued by the Government of Punjab on 23.09.1998, wherein, the Government of Punjab had decided to keep in abeyance the Assured Career Progression Scheme Policy till the guidelines for the implementation of the same are issued, as to decide the eligibility of the employees, who are to be granted the said benefit. Counsel argues that eligibility conditions were laid down in the instructions dated 17.04.2000, which were circulated, which have been noticed in the proceedings paragraphs of the judgment, an employee was required to have at least 50% of the good reports in ACR in the entire record and further last two Annual Confidential Reports out of the three, should be good.

Counsel for the respondents argues that petitioner did not fulfill the said criteria and therefore, the said benefit was rightly withdrawn from him as the same was wrongly extended to him. Counsel further argues that once, the mistake has been rectified, respondents were well within their rights even to recover the excess amount, which was paid to the petitioner by wrongly granting him the benefit.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is not matter of dispute that the ACP is to be granted only to the employees, who fulfill the criteria, which had been laid down for the grant of the said benefit as enumerated in the instructions dated 17.04.2000. The criteria for the grant of the said benefit is that an employee has to have atleast overall 50% good Annual Confidential Reports and out of the last three reports, atleast two reports on the date of his eligibility should be good. Admittedly, petitioner does not fulfill the said criteria for the grant of the benefit of ACP as on 01.01.1996 keeping in view the record. The same is not disputed by the learned counsel for the petitioner as well.

The question, as to whether the benefit, which was already extended to an employee under the ACP Scheme, can be withdrawn if the same has been wrongly granted, came up for consideration before the Division Bench of this Court on 03.05.2011 in **LPA No.30 of 2011** titled as '**Vir Bhan Mittal** Vs. **State of Punjab and another**'. The said LPA was also argued by learned counsel for the petitioner, wherein, it was held that in case, an employee was not entitled for the benefit of ACP on the day when the same was granted, the department was well within its right to withdraw the same as no ineligible employee can be allowed to retain the benefit for which he is not entitled. The relevant paragraph of the said judgment is as under: -

> "5. Having heard learned counsel for the parties we are of the view that order dated 3.7.1998 (P-3) passed by the respondents did not suffer from any legal infirmity. Firstly, no vested right has been acquired by the appellant to claim higher salary. In that regard reliance may be placed on a 5-Judge Bench judgment of Hon'ble the Supreme Court rendered in the case of Chairman, Railway Board v. C.R. Rangadhamaiah, (1997) 6 SCC 623. If there is an error committed by the respondent State in granting higher scale then the same can in any case be rectified. However, in the present case, the learned Single Judge has granted partial relief to the appellant by stopping recovery which was sought to be made by order dated 25.3.2003 (P-8). The aforesaid relief is based on the Full Bench judgment of this Court rendered in the case of Budh Ram (supra). Therefore, the right of the appellant has already been protected and no recovery could be effected from him on account of over payment made in pursuance to the order dated 3.7.1998 (P-3). Therefore, the view taken by the learned Single Judge in its conclusion deserves to be approved.
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> 6. However, we find that the grievance made by the appellant with regard to non-payment of gratuity deserves to be remedied. In that regard learned State counsel has already made a statement that the amount of gratuity as calculated in accordance with the revised pay of the appellant w.e.f. 1.1.2002, shall be paid to him within a period of two months from today. Considering the fact that about 7 years have already lapsed since the retirement of the appellant, we direct the respondents that the amount of gratuity shall also bear the interest at the rate of six per cent per annum from the due date till disbursement. The respondents shall remain bound by the statement

made by the learned State counsel.

7. The appeal stands disposed of in the above terms."

Further, learned counsel for the petitioner argues that instructions dated 17.04.2000, by which, the qualifications/eligibilities for the grant of ACP were laid down, are being applied retrospectively upon the petitioner as the petitioner had already been granted the benefit of ACP w.e.f. 01.01.1996. The said argument though seems attractive, but in the facts and circumstances of the present case, cannot be accepted. The Assured Career Progression Scheme came into being on 23.09.1998 though w.e.f. 01.01.1996. At the time when the scheme came into being, no criteria for the grant of benefit under the said scheme was laid down. As the eligibility criteria was still to be laid down, the Government had decided to keep the ACP Scheme in abeyance till the eligibility conditions are laid down. The petitioner was granted the benefit by the department without waiting for the issuance of eligibility conditions. Upon the issuance of the instructions dated 17.04.2000, by which the eligibility criteria was laid down, it was found that the petitioner was not eligible. Therefore, once the ACP Scheme was kept in abeyance till the eligibility conditions are laid down, which were actually laid down vide instructions dated 17.04.2000, the same has to be given effect to determine the eligibility and the petitioner was wrongly granted the said benefit without waiting for the eligibility conditions. Once the eligibility conditions were laid down, it has to be made operational from the date when the scheme came into being as, the scheme cannot be operated without eligibility conditions. Therefore, the claim of the petitioner that the instructions dated 17.04.2000 were being made operational retrospectively to withdraw the claim cannot be accepted.

Keeping in view the above, no infirmity can be found in the impugned order, by which the benefit of ACP, as granted to the petitioner after rendering 14 years of service w.e.f. 01.01.1996, has been withdrawn and his pay has been refixed. Hence, the claim of the petitioner for refixation is declined.

Now comes the question, as to whether upon refixation the respondents can recover the excess amount already paid to the petitioner or not.

The Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195,** has laid down the guidelines as under what circumstances, recovery cannot be done from the employees. The relevant part of the said judgment is 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:-
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> (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."

A bare perusal of the above reproduction shows that no recovery can be ordered from a retired employee. It is not disputed by the respondents that on the date, when the pay of the petitioner was refixed and recovery of the excess payment was ordered to be done, petitioner had already retired from service. Once, a bar has been imposed by the Hon'ble Apex Court on effecting the recovery from a retired employee, the action of the respondents in recovering the excess amount cannot be sustained. Further, the pay of the petitioner was refixed after his retirement and even the recovery was sought to be done after his retirement, which is impermissible keeping in view the judgment of the Hon'ble Apex Court in **Rafiq Masih's case (supra)**.

Learned counsel for the respondents has not been able to differentiate the case of the petitioner, which will allow the respondents to recover the excess amount, hence, the recovery, which is being done from the petitioner, is held to be bad and accordingly set aside keeping in view the law laid down by the Hon'ble Supreme Court in **Rafiq Masih case (supra)**.

No other argument has been raised by the counsel for the parties for the determination by this Court.

Keeping in view the above, order passed by the respondents refixing the salary of the petitioner is upheld, but the recovery, which is being sought to be done on account of the excess amount upon refixation, is held to be bad. Further, while issuing notice of motion, the recovery from the petitioner was stayed and therefore, no recovery in pursuance to the refixation of the salary of the petitioner will be undertaken by the respondents as the same is contrary to the settled principle of law.

In CWP No.701 of 2005, counsel for the petitioner states that some of the retiral benefits of the petitioner such as the leave encashment have been wrongly calculated by the respondents. Counsel for the petitioner prays that liberty be granted to the petitioner to approach the respondents in this regard by filing an appropriate representation.

Counsel for the respondents states that in case any such representation is received from the petitioner in this regard, the same will be considered and decided, within a period of three months from the date of receipt of the representation, by passing a speaking order.

The writ petitions stand partly allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

September 17, 2019
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Whether reasoned/speaking?	Yes
Whether reportable?	Yes