

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10668 of 2016
Date of Decision : 22.05.2019

Bhola Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunny Singla, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, challenge is to the order dated 22.04.2015 (Annexure P-7) by which pay of the petitioner has been re-fixed and a recovery has been ordered to the tune of ₹35,108/- for the period from 01.03.2010 till 31.01.2013.

The facts, which have been mentioned in the writ petition are that the petitioner was appointed as a Punjabi Teacher on 21.12.1978 on ad-hoc basis and he continued working as such when his services were regularized on 01.10.1980. Thereafter, petitioner was promoted to the post of Punjabi Master and was granted higher pay scale. Petitioner attained the age of superannuation on 31.01.2013. After the retirement of the petitioner, the case of the petitioner was sent to the Audit Department for fixation of the pensionary benefits, which had raised an objection that petitioner has wrongly been granted the benefit of ACP after 24, 32 years of service and, therefore, the pay of the petitioner needs to be re-fixed from 01.01.1996 and

a recovery is to be ordered from the employee from 01.03.2010 till 01.01.2013 amounting to ₹35,108/-. In view of the objection so raised, the pay of the petitioner was re-fixed vide order dated 22.04.2015 (Annexure P-7) and recovery of ₹35,108/- was ordered from the petitioner. The said amount has already been recovered from the pensionary benefits of the petitioner. Order dated 22.04.2015 (Annexure P-7) is under challenge in the present writ petition.

Upon notice of motion, respondents have filed the reply. In the reply, it has been stated that for the benefit of Assured Career Progression Scheme (ACP Scheme) after 8, 16, 24 and 32 years of service, which is to be granted w.e.f. 01.01.1996, a condition is there that where an employee has been placed in the selection scale and has been granted benefit of one or more increment, the service prior to the rendering of the said benefit cannot be counted towards the computing 8, 16, 24 and 32 years of service for the grant of ACP Scheme. The relevant paras of the reply are as under :-

“2. That petitioner has no cause of action to file the present writ as Government of Punjab granted the benefits of assured Progression Scheme to the employees after completion of 8, 16, 24 and 32 years of service in a post w.e.f. 01.01.1996 vide Punjab Government Department of Personal No. 7/37/98-5PP1/12851 dated 25th September 1998 (Annexure P-2). As per para 4 (iv) of the instruction it has been laid down that other existing conditions governing the grant of proficiency step-up (s) already notified shall continue to be applicable mutatis mutandis in accordance with the above orders. Later on clarification was issued vide Punjab Government Department of Personal vide no. 7/25/03-5PP1/3586 dated 5.10.2006, (True and typed copy of which is attached herewith as Annexure R-4). It has been laid down that where due to placement in the senior/selection scale an employee gets the

benefits of one increment or more his service prior to selection grade should not be counted towards Assured Career Progression Scheme.

3. *The petitioner got the pay re-fixed by changing the option under the Revised Pay Scale rules 1988 from to 01.12.1991 in view of decision of the Hon'ble High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 9140 of 2010 decided on 18.05.2010 (copy is appended as Annexure R-5). Later on he again changed the option from 1.12.1991 to 1.12.1992 which was not permissible. Moreover the pay of the petitioner was fixed wrongly on 1.12.1991 due to change of option as 2050/- instead of 1960/-.*

In view of the submissions made above, the writ petition deserves to be dismissed.”

Learned counsel for the petitioner, on the other hand, argues that respondents themselves had fixed the benefits and, therefore, after his retirement, the re-fixation of his pay unilaterally and without following due process of law and consequent recovery is not at all permissible and, therefore, the same is liable to be set-aside. Though, in the present writ petition, re-fixation of pay of petitioner as done vide order dated 22.04.2015 (Annexure P-7) is also challenged but at the time of arguments, learned counsel for the petitioner restricts his claim only qua the recovery which has been effected as mentioned in order dated 22.04.2015 (Annexure P-7).

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

It is a matter of fact that the pay of the petitioner was fixed by the respondents themselves. If the pay of the petitioner was not fixed according to the Rules, the onus lies upon the respondents themselves. It is the respondents, who should have fixed the salary of the petitioner in

accordance with the Rules. Further, the question of law which needs to be

answered is as to whether, petitioner, who had retired from service on attaining the age of superannuation on 31.01.2013, can be subjected to the recovery after re-fixing his pay after his retirement. This question stands answered by the Hon'ble Supreme Court of India in a judgment titled as ***State of Punjab and others Vs. Rafiq Masih (White Washer) and Ors. 2015 (4) SCC 334***. Hon'ble Supreme Court has culled out the categories in para 12 as to under what circumstances, recovery from the employees cannot be effected. It has been held that no recovery can be ordered from Class-III and Class -IV employees and further no recovery can be ordered by withdrawing a benefit, which was extended five years prior to the date of withdrawal of the same. Further, recovery cannot be ordered from an employee, who has already retired or is about to retire within a period of one year. The relevant paragraph 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:

(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.”

The case of the petitioner is squarely covered by the Category which has been culled out by the Hon'ble Supreme Court, where the recovery cannot be ordered. In the present writ petition, petitioner stands already retired when his pay was re-fixed and the consequent recovery has been ordered in the year 2015. Further, the benefit which was sought to be withdrawn by re-fixation was extended to the petitioner more than 5 years ago the same was withdrawn in the year 2015 and, therefore, the recovery which is being ordered by the respondents is contrary to the settled principle of law and hence, cannot be allowed. Therefore, order dated 22.04.2015 (Annexure P-7) to the extent that recovery to the tune of ₹35,108/- was ordered, is set-aside.

The recovery of the amount of ₹35,108/- which has been made from the pensionary benefits of the petitioner be refunded to the petitioner within a period of two months from the receipt of certified copy of this order.

Writ petition stands disposed of in above terms.

May 22, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes