

Sr. No. 214

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

**CWP No.15191 of 2014 (O&M)
Date of Decision: 15.01.2019**

Sudesh Rani

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. D.R.Parihar, Advocate,
for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. G.S.Chinna, Advocate,
for respondents No.2 and 3.

ARUN MONGA, J.(ORAL)

The present petition has been filed for issuance of a writ in the nature of certiorari quashing the impugned order dated 17.05.2005 (Annexure P-4) passed by the Administrator, Market Committee, Abohar. Whereby, the pay of the husband of the petitioner was reduced. The ostensible ground thereof was that a personal grade of the pay scale was erroneously granted to him earlier as per order dated 25.07.1990 (Annexure P-2) passed by Punjab Mandi Board.

2. Learned counsel for the petitioner points out that neither an opportunity of hearing was granted nor any show cause notice was issued before passing of the impugned order. On both counts, impugned order is liable to be set aside being in violation

of principles of natural justice.

3. He further points out that an appeal was also preferred by the petitioner's husband, however, vide appellate order dated 13.06.2006 (Annexure P-6), the impugned order of reducing his pay was upheld on the ground that the same is merely a rectification of the error committed by the respondents.

4. A revision filed against the appellate order was also dismissed vide order dated 28.10.2013 (Annexure P-7), holding that the appellate order did not suffer from any irregularity. It was merely a case of rectification of an error, committed by the respondents and, therefore, petitioner's husband was not entitled to higher pay scale erroneously granted to him.

5. Per contra, learned counsel for the respondent Market Committee states that the impugned order as also appellate order followed by the order passed in Revision do not suffer from any irregularity. It is thus a case of rectification of error in granting the pay scales to the husband of the petitioner. He points out that pay of the petitioner's husband has been reduced only to rectify the bona fide error committed as has been noticed in the impugned order. Vide Circular dated 11.11.1983, the petitioner was not eligible for grant of pay scale of Rs.450-800. He contends that the pay scale of Rs.450-800 was to be granted only to those employees who were in service on 01.01.1978 or appointed prior to 03.07.1980 and were getting the un-revised pay scale of Rs.110-250/-.

6. I have gone through the pleadings on record appended

thereto in the present case and I find that argument of the learned counsel for the respondent is misplaced. The petitioner was entitled to his pay as per Memo dated 25.07.1990 (Annexure P-2) whereby, it was ordered that the 'Caretakers' working in the Market Committee were to be granted a pay scale of Rs.510-800 w.e.f. 01.01.1978 and Rs.1200-2100 w.e.f. 01.01.1986 as a purely personal grade. The same was, concededly, granted to the petitioner. Therefore, to contend, that the petitioner since was not eligible as per the Circular dated 11.11.1983 (Annexure P-1), being not in service as on 01.01.1978 is completely inconsequential. His pay was reduced on a completely wrong premise.

7. That being so, it is held that the petitioner's husband was rightly granted the pay scale as per order dated 25.07.1990 (Annexure P-2).

8. Learned counsel for the petitioner also places strong reliance on the judgment rendered by **Full Bench of this Court** titled as **Budh Ram and others Vs. State of Haryana and others reported as 2009 (3) SCT 195**. Whereby, it was held that it is no longer open to the authorities granting the benefits, no matter howsoever 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.

9. Learned counsel for the petitioner contends that in the

present case not only the pay scale was rightly granted to the petitioner but even if it is assumed that there was some error ostensibly correction was sought to be carried out vide impugned order, the same is hit by the principles as enunciated by the Full Bench of this Court. Concededly, the petitioner was not at fault in any manner and, therefore, the benefit once conferred cannot be taken away.

10. In this case, there is a finding that owing to some misrepresentation or mistake of the deceased husband of petitioner, the pay scale was wrongly granted to him. Learned counsel for the petitioner points out that the said stand is not sustainable in view of principle of law as enunciated by a Full Bench of this Court and fortified later in a judgment rendered by the Supreme Court of India titled as ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc. reported as 2015 (1) SCT 195.***

Wherein, in no uncertain terms it has been once again reiterated that where payments having mistakenly been made by the employer in excess of the entitlement of the employee, the same cannot be recovered. Particularly, it is completely impermissible in case of employees belonging to Class III and IV. For ready reference, the principles enunciated by the Hon'ble Supreme Court of India are extracted herein below:-

- 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.”

11. Learned counsel for the petitioner contends that even otherwise, the benefit of pay scale was not erroneously granted as has been held vide impugned orders. He states that the petitioner's husband was granted the benefit of increased pay scale as per Annexure P-2 and not as per Annexure P-1. Therefore, to apply the conditions as envisaged in Annexure P-1 was totally out of place.

12. I am in complete agreement with the arguments addressed by learned counsel for the petitioner. Also, keeping in view the principles of law enunciated by the Hon'ble Supreme Court of India, *ibid*, I hold that not only, the petitioner's husband was rightfully granted the pay scale as per Annexure P-2 but in any case, even if it is assumed the same was erroneously granted, recovery of amount already disbursed, it is not permissible as admittedly he belongs to Class-III employee category.

13. Accordingly, the impugned order passed by the Revisional Authority dated 17.05.2005 (Annexure P-4) is set aside. Consequent thereto, the appellate order dated 13.06.2006 as also the order dated 28.10.2013 are also set aside. Respondents are directed to refund the recovery amount which has been effected from the retiral benefits of the petitioner's husband along with interest @ 12% per annum within a period of two months from today.

14. It is a harsh case where recovery has been effected from the retiral benefits of the petitioner's husband. The husband of the petitioner had to litigate right until his death without getting any relief and thereafter, it is his widow who has been pursuing the case.

15. In view thereof, litigation cost of Rs.25,000/- is directed to be paid to the petitioner by the respondents.

16. Petition is allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

15.01.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No