

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20257-2016

Date of Decision: 26.08.2019.

Sushil Verma and Ors.

... Petitioners

vs.

Union of India and Ors.

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Naveen Daryal, Advocate, for the petitioners.

None for the respondents.

ARUN MONGA, J.(ORAL)

Petitioners herein, *inter alia*, seek issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 28.06.2016 (Annexure P-7) passed by Principal, Sainik School Kunjpura, Karnal directing recovery of vacation pay from the school staff.

2. Brief facts. Petitioners were appointed by direct recruitment to the respective posts of Master, Assistant Master, Lab Assistant and Band Master against regular posts through proper advertisement. As per their terms and condition contained in the appointment order, they were to be on probation period of one year (extendable upto 2 years) and on completion of the period of probation were to be confirmed with effect from the date of their joining.

3. The impugned order of recovery is passed on basis of a report of Inspecting Officer of Sainik School Society, New Delhi. Extract of the report of Inspecting Officer is reproduced hereinbelow:-

“Recently during the schools inspection by the

inspecting Officer, SSS, New Delhi. It has been observed that the school has paid erroneously vacation period pay and allowances to newly recruited staff. It was clarified that these payments are contradictory to the rules provision. Hence, not in order.”

4. Respondent-Department issued a recovery note dated 28.06.2016 for respective recoveries from the vacational staff without affording any opportunity of hearing. Pursuant thereto, first installment was deducted in July 2016. Petitioners caused a legal notice to review the decision dated 28.06.2016 (Annexure P-8), but the same has not been adverted by the respondents. Hence, the present writ petition.

5. Learned counsel for the petitioners submits that the petitioners are regular employee of respondent with effect from the date of their respective joining. As per Rule 8.5 of the Sainik School Society's Rules and Regulation, they are entitled to pay for the vacation period. Relevant part of Rule 8.5,*ibid* is extracted hereinbelow:-

“8.5.... Part-time 'staff' are not entitled to vacation pay. Teachers and others who are specifically employed in temporary or leave vacancies shall also not be entitled to any vacation pay. Newly recruited regular members of vacational staff shall be entitled vacation pay only when they have completed five months service (excluding vacation) on the date on which the vacation begins or subsequently. In other words a minimum of 5 months spent on duty is necessary for eligibility to draw vacation pay” wordings of the quoted rule make it clear, on the date on which the vacations begin or subsequently.”

6. Perusal of above rule clearly envisages that the petitioners

being regular employee are entitled to the salary of vacation pay.

7. Learned counsel for the petitioners further contends that the respondent paid salary of vacation period to the petitioners as well as other similarly situated persons from the year 2003 to 2013. Order of recovery from the petitioners after 03 years of the last payment is against law, as all the petitioners were confirmed before passing the impugned recovery order.

8. Per contra, learned counsel for the respondent contends pay was paid to the petitioners erroneously. Recovery order is valid and the same has been issued per Rule 8.5, *ibid*. It is settled position in law that if any mistake occurs while making payment same can then be corrected as and when it comes to notice. Petitioners have no right to challenge the notices and orders of recovery as they are not entitled to the vacation pay. The petitioners are not entitled to vacation pay, as they had not completed 05 months' service before beginning of the vacation. Petitioners were offered opportunity of hearing before passing order dated 28.06.2016 (Annexure P-7) and petition, therefore, deserves to be dismissed.

9. After hearing the rival arguments, I am of the opinion that the writ petition deserves to be allowed. Case of the petitioners is squarely covered by a judgment rendered by Hon'ble the Apex Court in case titled as ***State of Punjab and others vs. Rafiq Masih (White Washer)***, reported as **2015 (4) SCC, 334**. Even though, learned counsel for the petitioners strenuously laid emphasis on the fact that vacation pay of the petitioners, which is sought to be recovered after an inordinate delay of 03 to 16 years, was rightly given to them as per Rule 8.5, *ibid* as similarly applicable to Sanik School, Karnal. No doubt, the petitioners were

confirmed into the service from the date of their joining, way prior to passing of recovery order, on that count alone, they are entitled for salary of vacation period for which they have been paid.

10. To my mind, admissibility of vacation pay need not be gone into in view of the ratio enunciated by Hon'ble the Apex Court in ***Rafiq Masih's supra*** which says that even if the benefit has been erroneously conferred on a Class-III and Class-IV employee, the same cannot be recovered. The relevant part of the judgment rendered by Hon'ble the Apex Court is extracted hereinbelow:-

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

- (i) Recovery from the employees belonging to Class-III and Class-IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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.

In view of the aforesaid, impugned recovery order dated 28.06.2016 (Annexure P-7) qua the petitioners is set aside. Any amount recovered pursuant to aforesaid impugned order shall be refunded to the petitioners with interest @ 6% per annum.
12.

Petition is allowed.
13.

No order as to costs.

26.08.2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No