

CWP No. 26412 of 2017 and other connected cases

1

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

(1)

CWP No. 26412 of 2017

Date of Decision : 21.05.2019

S.P. Arora

...Petitioner

Versus

State of Haryana and another

...Respondents

(2)

CWP No. 26413 of 2017

Ghanshyam Dass

...Petitioner

Versus

State of Haryana and another

...Respondents

(3)

CWP No. 26414 of 2017

Gurmukh Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

(4)

CWP No. 14471 of 2018

Deepak Sachdeva

...Petitioner

Versus

Haryana Seeds Development Corporation Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jai Bhagwan Sharma, Advocate for the petitioner(s).

Mr. C.S. Bakhshi, Additional Advocate General, Haryana.

Harsimran Singh Sethi, J.(Oral)

By this common order, four writ petitions, the details of which have been given in the heading, are being decided as all the writ petitions involve same question of law and the same facts.

The question of law as being raised by the counsel for the petitioner is whether after withdrawing the benefit from an employee and re-fixing his salary, recovery can be ordered from a Class-III and Class-IV employee, especially, the employees, who have already retired from service or are nearing their retirement keeping in view the law laid down by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and Ors. 2015(4) SCC 334***. For the purpose of the present writ petition, the facts are being taken from CWP No. 26412 of 2017.

Petitioner was appointed in the respondent-Corporation as an Accountant Clerk on 20.04.1983 and thereafter, he was promoted as an Account Assistant on 24.03.1992. He was further promoted as Sectional Officer on 17.03.2010 and thereafter to the post of Accounts Officer on 23.04.2015. Petitioner continued working as such till 31.01.2017, when he retired on attaining the age of superannuation.

After the petitioner was promoted as a Sectional Officer in March, 2010, his salary was fixed in the pay band of 9300-34800+4000 Grade Pay. While making promotion, petitioner was granted promotional

increment also and his pay was accordingly fixed on 15.07.2010. Petitioner continued to get the salary after the same was re-fixed in the year 2010.

Respondent-State of Haryana issued a Clarification on 09.04.2010 as to how, the salary is to be fixed and the promotional increment, which was granted to the petitioner, was withdrawn and the salary of the petitioner was re-fixed by reducing his basic pay in view of the said Clarification dated 09.04.2010. This order of re-fixation of salary was passed on 02.06.2014. This order withdrawing the promotional increment and consequent re-fixation of salary as well as recovery is under challenge in the present writ petition. Similar orders on the same issue of re-fixation of their salary and consequent recovery were passed against the other petitioners in the other writ petitions, which have been impugned by them in their respective writ petitions.

Upon notice of motion, respondents have filed a reply and in the reply, it has been stated that the excess amount, which was paid to the petitioner by the grant of promotional increment in the year 2010, was rightly withdrawn in view of the Clarification issued by the State on 09.04.2010. Learned counsel for the respondents argues that rectification of the mistake is well within the jurisdiction of the State and, therefore, the claim of the petitioner(s) for setting-aside the impugned orders by which the pay was re-fixed and consequent recovery was ordered, is liable to be rejected.

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

The admitted facts are that the respondents themselves fixed the salary of the petitioner(s) in the year 2010 by granting them the benefit of

the promotional increment. The said benefit of promotional increment was granted by the respondents themselves to the petitioner(s). It was only after the Clarification dated 09.04.2010, the same was sought to be withdrawn and was actually withdrawn after re-fixing the salary of the petitioner(s) by the impugned orders which were passed after a period of four years of the issuance of the Clarification on 09.04.2010. After withdrawing the benefit, the recovery was also ordered.

The question, which is to be decided as to whether, under these facts and circumstances, the respondents have the right to recover the amount upon re-fixation of salary or not? Learned counsel for the petitioner (s) has stated that the petitioner(s)' grievance is only qua the recovery and not qua re-fixation of their salary.

The issue of recovery has been settled by the Hon'ble Supreme Court of India by the judgment in ***State of Punjab and others Vs. Rafiq Masih's case(supra)***. In the said judgment, the guidelines have been laid down as to under what circumstances, the recovery can be ordered and under what circumstances, the recovery is impermissible. In para 12 of the judgment, the cases have been given where the recovery is impermissible.

The said paragraph of the 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.”

A bare perusal of the above reproduced paragraph would show that no recovery can be ordered from the employees belonging to Class-III and Class IV service. Learned counsel for the petitioner(s) contends that the petitioner(s) in all the writ petitions were working as Sectional Officer, which is a Class-III post and, therefore, recovery cannot be ordered keeping in view Clause (i) of para 12 of the judgment of the Hon'ble Supreme Court of India. Learned counsel for the petitioner(s) further states that the petitioner(s) in CWP Nos. 26412 of 2017, 26413 of 2017 and 26414 of 2017 except CWP No. 14471 of 2018, had already retired and, therefore, the recovery was not permissible from them even under Clause (ii) of para 12, where the recovery from a retired employee or the employees, who are to retire in the near future, cannot be ordered.

Learned counsel for the respondents is not able to dispute the proposition of law as laid down in the judgment of the Hon 'ble Supreme Court of India as well as the categories laid down and also the fact that the

cases of the petitioner(s) are covered under Category (i) and (ii) of para 12 of the ***State of Punjab and others Vs. Rafiq Masih's case(supra)***. Learned counsel for the respondents, however, states that the judgment in ***State of Punjab and others Vs. Rafiq Masih's case(supra)*** will not be applicable in the present case for the reason that the judgment is prospective and the punishment had already been imposed upon the petitioner(s) by the date when the judgment was delivered on 18.12.2014. This question of law has already been considered by the Division Bench while deciding LPA No. 2448 of 2016, titled as ***State of Punjab and others Vs. Amrik Singh and others***, decided on 09.08.2018. The same contention was raised by the State of Punjab, which was repelled by the Division Bench. Para 9 of the said judgment is as under:-

*“9. The contention that the principles laid down in **Rafiq Masih** will apply 'prospectively' cannot be accepted as no such limitation has been imposed by the Hon'ble Supreme Court. Taking into consideration the current status of the respondents, namely, that many of them have retired or are near retirement and the fact that they are holding Group 'C' & 'D' posts, we are satisfied that no interference in the discretion exercised by learned Single Judge is called for.”*

Therefore, keeping in view the decision of the Division Bench in the above mentioned LPA, the arguments raised on behalf of the respondents that judgment in ***State of Punjab and others Vs. Rafiq Masih's case(supra)*** will be prospective, cannot be accepted. Therefore, the impugned orders, which have been passed against the petitioner(s) in the writ petitions, which are being decided by the present order, cannot be sustained in the eyes of law, hence, are set-aside only qua the recoveries which have been ordered against them. The challenge to the re-fixation has

already been given up by the counsel for the petitioner(s).

In view of the above, the impugned orders of recovery in all the above mentioned writ petitions are set-aside and the recoveries, which have been effected from the petitioner(s), are ordered to be refunded to the petitioner(s). Let the order be complied with within a period of two months from the receipt of copy of this order.

All the writ petitions stand allowed in the above terms.

May 21, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*