

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.2840 of 2017 (O&M)
Date of Decision.08.07.2019

Raj Kumar and others ...Petitioners

Vs

State of Haryana and others ..Respondents

2. CWP No.9540 of 2017

Jagbir Singh and others ...Petitioners

Vs

State of Haryana and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajeev Sharma (Raju), Advocate
for the petitioners.

Mr. Subhash Ahuja, Advocate
for respondent No.4 in CWP No.9540 of 2017.

Mr. Harish Nain, AAG, Haryana.

:-

AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two writ petitions bearing No.2840 and 9540 of 2017 based upon similar cause of action and seeking identical relief. Facts are being enumerated from CWP No.2840 of 2017.

Petitioners seeks quashing of notice dated 14.12.2016 (Annexure P-11) whereby amount of ₹1,95,819/- as allegedly paid by Mahendergarh Cooperative Societies in excess has been sought to be recovered.

Learned counsel for petitioners submitted that petitioner No.1 is employee of Satnali Primary Agricultural Cooperative Society

Ltd. Initially petitioner was appointed as Clerk in some other Cooperative Society but in the year 2006, said Cooperative Society was amalgamated in respondent No.6 and vide order dated 22.01.2015 (Annexure P-1) was promoted to post of Prabandhak. Petitioner No.2 and 3 are employees of respondent No.7 and 8 respectively i.e. Mahendergarh Primary Agricultural Cooperative Society and Sihma Primary Agricultural Cooperative Society vide same order were promoted as Prabhandhak. Respondent Nos.6, 7 and 8 are the Cooperative Societies registered under the Haryana Cooperative Societies Act, 1984 and before amalgamation, their services were governed by Primary Agricultural Cooperative Credit and Service Rules, 1992, but thereafter, no service rules were framed for governing services of employees belonging to Primary Agricultural Cooperative Societies (PACS). After amalgamation, Government accorded approval for grant of salary and other incentives vide order dated 5.12.2018 (Annexure P-2), which was clarified on 8.1.2009 (Annexure P-3). On 11.02.2010 (Annexure P-4), a Committee headed by respondent No.1 decided to grant certain benefits to employees of PACS and respondent No.2, Registrar Cooperative Societies accepted demands of employees and granted certain allowances like Uniform Allowance, Payment of Gratuity and benefits of increments etc. This fact is evident from letter dated 7.10.2010 (Annexure P-5). Even proposal for enhancement of 7 ½% per annum pay to employees was also accepted vide letter dated 25.10.2011 (Annexure P-6). Vide order dated 16.08.2013 (Annexure P-7), Registrar Cooperative Societies also granted one time

enhancement of ₹1000/- in consolidated salary of PACS employees w.e.f. 1.6.2013 and special incentives of ₹200/- and ₹500/-. Additional Chief Secretary to Govt. Haryana, Finance Department vide letter dated 17.12.2013 also granted interim relief of ₹2000/- per month to Group C & D employees w.e.f. 1.1.2014.

In the year 2014, respondent No.2 framed service rules for the employees called 'The Primary Agriculture Cooperative Societies Staff Service/Primary Cooperative Credit and Service Societies Rules, 2014 (hereinafter called 2014 Rules) notified on 21.07.014 with retrospective effect i.e. from 01.03.2014.

Learned counsel for petitioners submitted that aforesaid Rules were framed in contravention of Section 37 of the Act, which dealt with constitution of common cadre. In the absence of consultation of cadre society, aforementioned Rules were not applicable. Vide Annexures A and B circulated with 2014 Rules, pay of employees has considerably been reduced whereas existing pay being drawn by employees cannot be reduced as no service rules can be framed with retrospective effect. Reliance was laid to decision rendered by Division Bench of this Court in LPA No.52 of 2003 titled as '*Partap Singh and another Vs. Hari Chand and others*'. Vide letter dated 6.7.2015, PACS Employees Union made certain suggestions to remove anomalies/discrepancies in 2014 Rules. A bunch of writ petitions came up for hearing on 3.8.2015 and disposed of by Division Bench with direction to the Committee constituted by Registrar to consider issues raised by PACS employees regarding amendment and until that, no recovery was to be effected.

Respondents No.5 issued impugned notice dated 14.12.2016 (Annexure P-11) to respondent No.7 for recovery of excess amount. Accrued rights of employees cannot be taken away by the Rules. In this context, relied upon judgment rendered by Hon'ble Supreme Court in **Food Corporation of India etc. vs. Om Parkash Sharma and others 1998(3) RSJ 504.**

Ms. Subhash Ahuja, learned counsel appearing for respondent No.4 and Mr. Harish Nain, AAG, Haryana submitted that petitioners cannot be permitted to assail order impugned in writ petition for simple reason that Committee did not agree with contention of employees union and therefore, recoveries sought to be effected are perfectly legal and justified. Since there was interim stay by Division Bench, no steps were taken for recovery.

I have heard learned counsel for parties, appraised paper book and of view that arguments of Mr. Ahuja and Mr. Nain are not sustainable, as operative part of judgment did not envisage such condition. It is not a matter of doubt that no decision has come on record to amend 2014 Rules with retrospective effect. Section 37 of Haryana Cooperative Societies Act, 1984 reads as under:-

“37. Constitution of common cadre.-

(1) The Registrar may require an apex society to constitute a common cadre of all or specific class of employees in the service of that society or in the services of the central societies which are members of the apex society, or of the services of the primary societies which are

members of the apex society or the aforesaid central societies.

(2) When a common cadre is constituted under sub-section (1), the Registrar shall make rules to regulate recruitment and the conditions of service of such employees, and their strength in consultation with the cadre society:

Provided that the Registrar may add or delete any class of employees from the common cadre in consultation with the cadre society.”

There has to be consent of the cadre society. There is no dispute with regard to amalgamation of societies but service condition of employees cannot be changed and that too with retrospective effect, thus, emoluments already received cannot be recovered without any fault of employees. The Hon’ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334** while dealing with bunch of matters where monetary benefits were given to employees consequent upon a mistake committed by concerned competent authority in determining emoluments payable to them, summarized the situations, wherein recoveries by employers would be impermissible, as under:-

“ (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, 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."

Concededly petitioners are Group 'C' employees and in my view, order of recovery passed by respondents is harsh and arbitrary, thus, case of petitioners fall under situations (i) and (v) as enumerated by Hon'ble Supreme Court in ***Rafiq Masih's case*** (*supra*).

The impugned orders i.e. Annexure P-11 and P-12 in CWP Nos.2840 of 2017 and 9540 of 2017 respectively are quashed and both writ petitions are allowed.

(AMIT RAWAL)
JUDGE

July 08, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No