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

Date of decision: 24.02.2020

1. CWP No. 16053 of 2001 (O&M)

Sh. J.C. Sharma and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

2. CWP No. 11387 of 2005 (O&M)

Sh. V.K. Godara and another

...Petitioners

Versus

The State of Haryana and others

...Respondents

3. CWP No. 15090 of 2002 (O&M)

B.S.Chand (Retd.)

...Petitioner

Versus

The State of Haryana and others

...Respondents

4. CWP No. 13716 of 2003 (O&M)

S.N.Gupta and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

5. CWP No. 9731 of 2003 (O&M)

K.C.Bhardwaj

...Petitioner

Versus

The State of Haryana and another

...Respondents

6. CWP No. 1144 of 2002 (O&M)

Sh. M.R.Bansal and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

7. CWP No. 3861 of 2002 (O&M)

Sh. M.C.Gupta and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

8. CWP No. 5571 of 2002 (O&M)

K.C.Gupta

...Petitioner

Versus

The State of Haryana and another

...Respondents

9. CWP No. 8359 of 2002 (O&M)

O.P.Bhola

...Petitioner

Versus

The State of Haryana and others

...Respondents

10. CWP No. 9639 of 2002 (O&M)

R.C.Khanna and others

...Petitioners

Versus

The State of Haryana and others

...Respondents

11. CWP No. 10157 of 2002 (O&M)

Dr. Daljitam Singh and another

...Petitioners

Versus

State of Haryana and another

...Respondents

12. CWP No. 13156 of 2003 (O&M)

Inder Singh

...Petitioner

Versus

The State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Kotla, Advocate
for the petitioner in CWP-11387-2005.

Mr.Tara Chand, Advocate
for the petitioners in CWP No. 13716 of 2003.

Mr. Hitesh Pandit, Addl. AG, Haryana.

Ritu Bahri, J. (Oral)

This order shall dispose of all the above mentioned 12 writ petitions as similar issue is involved in the said writ petitions.

Petitioners are seeking quashing of notification dated 07.01.1998 and 07.08.1998 (Annexures P-5 and P-6) and recovery notices (Annexures P-7 to P-9) whereby recovery is being sought from the petitioners. Vide notification dated 16.05.1990, the Engineering Cadre and HCS Cadre was equated with respect to grant of pay scale and subsequently higher pay scale granted to Engineering Cadre vide order dated 16.05.1989/02.06.1989 was withdrawn to bring parity of Engineering Cadre with HCS Cadre. By issuing notification of 07.01.1998 providing the revision of pay scales w.e.f. 01.01.1996, the respondents discriminated and petitioners were not granted parity with the HCS Cadre. The notification was issued on 02.06.1989 (Annexure P-1) and 16.05.1990 (Annexure P-2). Petitioners and others have filed CWP No. 8172 of 1990 which was admitted and stay was granted and because of stay, all the Engineering Cadre officers were granted the pay scale of 4100-5300 on completion of 12 years of regular service. Thereafter, some other Engineers of the Building and Roads Deptt. filed CWP No. 16997 of 1998 claiming parity and this writ petition was allowed on 31.08.1999 by the Division Bench (Annexure P-3). Thereafter, State of Haryana preferred SLP which is allowed vide judgment dated 20.11.2000 (Annexure P-4) and held that selection grade of 4100-5300 will be restricted to 20% of the cadre posts as provided in the clarification dated 16.05.1990. Subsequently, State Government issued another notification dated 07.01.1998 (Annexure P-5) and the pay scales were revised but not equated with HCS Cadre. After the decision of the Supreme Court, State Government issued comprehensive instructions vide circular dated 24.01.2001 (Annexure P-7) in the light of the said judgment and thereafter the demand notices were issued Annexures P-7 to P-9 for

recovering of selection grade which was granted in excess of 20% to the cadre post.

The grievance of the petitioners in the writ petitions was that on one side they were given parity of pay scale with HCS Cadre and on the other side if parity is not given, the recovery would be huge if selection grade of 20% is to be effected.

When notice of motion was issued, there was interim stay on recovery from the petitioners pursuant to the notices (Annexures P-7 to P-9).

Learned State counsel has referred a judgment of the Division Bench of this Court in ***CWP No. 8815 of 2002*** titled as ***Dr. Rajbir Singh Versus State of Haryana*** whereby the claim of the parity of pay scales at par with HCS has been rejected. The Division Bench has considering the case of engineers as well as doctors.

In the present case, the parity is not to be given to the petitioners. The question is whether the selection grade granted beyond 20% of the cadre post can be recovered from them. The matter has been pending and interim stay has been granted to all the petitioners way back in the year 2001. All the petitioners have retired. Learned counsel for the petitioners submits that some of the petitioners have expired also.

In the facts of the present case, it is not the case of respondents that benefit of selection grade was granted to the petitioner(s) on account of any misrepresentation made by them. Hon'ble the Supreme Court in ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.,*** 2015 (1) RSJ 177 has held that where payment is made, by mistake, in excess of the entitlement, recovery cannot be made keeping in view that the employee has retired or is due to retire within one year of the order of recovery. In para

No.12 of the judgment, it has been observed 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.”

In the facts of the present case, petitioner(s) have been granted selection grade beyond 20% of the cadre posts. Some of the petitioners have been retired and out of the remaining, some petitioners have expired. Keeping in view the above guidelines issued by Hon'ble the Supreme Court, no recovery can be effected from the petitioners. However, keeping in view the judgment passed by Division Bench of this Court in **Dr. Rajbir Singh's** case (supra), they cannot claim parity of pay scale at par with HCS.

In view of the above discussion, all these petitions are partly allowed and it is held that respondents cannot make recovery of selection grade, granted to the petitioners beyond 20% of the cadre posts.

24th February, 2020
shabha

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No