

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 2228-2016
Date of decision:-12.02.2020

Dilbagh Singh Hooda

.....Petitioner

vs.

State of Haryana and ors.

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Saurabh Dalal, Advocate
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana

RITU BAHRI, J.(Oral)

Petitioner is seeking quashing of order dated 03.09.2015 (P-1) vide which recovery of excess amount has been ordered.

The petitioner was regularized in the department on 15.09.1982 as Junior Engineer (J.E) (Mechanical) and later on the post was re-designated to A.S.D.E (Asssistant Sub Divisional Engineer). Thereafter, from 01.01.1996, the pay of the petitioner was re-fixed and vide order dated 03.09.2015 (P-1), the petitioner was granted 3rd ACP on completion of 24 years of service. But the pay of the petitioner was reduced. The petitioner retired from service on 31.10.2016 on attaining the age of superannuation.

On notice of the petition, a written statement has been filed on behalf of respondent Nos. 1 to 3 stating therein that the pay of the petitioner was revised in terms of recommendation of sixth pay commission report, vide order dated 31.08.2009 (R-1). At the time of fixation of pay, the benefit of one additional increment was wrongly given to the petitioner w.e.f 01.01.1996. This mistake came into the notice at the time of fixation of pay

of the petitioner in the year 2014 when the benefit of 3rd ACP was required to be given to the petitioner. The mistake was corrected and benefit wrongly given to the petitioner w.e.f 01.01.1996 was withdrawn by re-fixing the pay of the petitioner, vide office order dated 03.09.2015 (P-1). The stand taken by the respondents in the written statement that the petitioner submitted one undertaking with the department while re-fixation of his pay that if the payment found to have been made in excess, the same would be refunded.

Learned counsel for the petitioner at the very outset has referred to decision of Division Bench of this Court in ***LPA No. 361-2014 titled as State of Haryana and others vs. Subhash Chander and others, decided on 12.05.2014*** to contend that on account of wrong fixation of payment earlier, the recovery could not be affected from the petitioner.

The question for consideration before this Court that can the recovery of excess amount be affected from the petitioner after a gap of almost 05 years.

It is not in dispute that the pay of the petitioner has been fixed by the department and the petitioner has not misrepresented to the department. While re-fixing the pay of the petitioner, one increment has been wrongly given to him vide order dated 31.08.2009 and now the respondent-department is seeking to recovery the amount on the ground that petitioner has given an undertaking that while re-fixation of his pay that if the payment found to have been made in excess, the same would be refunded.

This undertaking cannot be used against the petitioner after a gap of almost 06 years for recovering the excess amount, as it was not the

fault of the petitioner. Only re-fixation can be done but amount given in excess cannot be recovered after a gap of almost 06 years, as held by this Court in *Subhash Chander's case (supra)*. It was the mistake of the department and they have rectified now by re-fixing the pay of the petitioner.

In view of the above, the writ petition is allowed and order dated 03.09.2015 (P-1) is modified to the extent that the respondents can only re-fix the pay of the petitioner but they cannot recover the amount, which has already been given to the petitioner.

12.02.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No