

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-654-2017 (O&M)
Date of Decision: 03.02.2020

Daljit Singh

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. R.S. Bajaj, Advocate for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Mr. A.S. Chadha, Adovcate for respondents no.2 to 4.

TEJINDER SINGH DHINDSA.J (Oral)

Petitioner was initially appointed as Compressor Operator on 3.2.1986 on ad hoc basis under the Punjab State Cooperative Milk Producers Federation Ltd. Thereafter, he was issued a fresh appointment letter dated 21.4.1987 appointing him on the same very post of Compressor Operator on a regular basis w.e.f. 1.4.1987.

Instant petition has been filed assailing the order dated 15.11.2016 (Annexure P-8) whereby pay of the petitioner stands re-fixed to a lower stage on account of withdrawal of one annual increment that had been granted to him during the tenure of his ad hoc service. Further challenge is to the consequential order dated 30.12.2016 (Annexure P-9) directing recovery of Rs.1,44,868/-.

Instant petition had come up for preliminary hearing before this Court on 17.1.2017 and while issuing notice of motion recovery of the afore-noticed amount had been directed to be stayed.

It would require notice that petitioner has superannuated on 31.1.2017. Even though, counsel for contesting respondent no.2 is not in a

position to confirm, yet, counsel for the petitioner submits that at the stage of retirement the amount of Rs.1,44,868/- has been withheld from his retiral benefits.

Learned counsel representing the petitioner at the very outset makes a statement that he is confining the scope of the instant petition only as regards recovery of the financial benefit that had already been enjoyed by the petitioner towards release of the annual increment. Challenge, as such, to the exercise of re-fixation of the pay to a lower stage by virtue of order dated 15.11.2016 (Annexure P-8), as such, has been given up.

It has been argued on behalf of the petitioner that the benefit of annual increment had been granted by the respondent-Federation of its own accord and not on the basis of any false representation having been made. Further urged that there was no concealment of facts at any stage. It is contended that if there be no fraud and misrepresentation attributable to an employee, recovery of financial benefits already granted would not be permissible.

Per contra, counsel representing the contesting respondents no.2 to 4 has argued that the petitioner was initially appointed on 3.2.1986 on ad hoc basis and thereafter was issued a fresh appointment letter dated 21.4.1987 in the pay scale of Rs.450-800 with basic pay of Rs.450. Further submitted that in the capacity of a regular employee service of the petitioner was governed by the Cooperative Milk Producers Union Employee Service (non-common cadre) Rules, 1996 (herein after to be referred to as the 1996 Rules). Under Rule 2(f) the word 'employee' had been defined and excludes from such term a casual worker/daily wage worker/ad hoc worker or apprentice/trainee or part time. It is urged that since the benefit of annual

increment had been granted during the course of ad hoc engagement, petitioner was not entitled to such financial benefit and accordingly the impugned order dated 15.11.2016 (Annexure P-8) was passed directing re-fixation. Counsel submits that the recovery of Rs.1,44,868/- vide Annexure P-9 is merely consequential and is bound to follow. Counsel prays for dismissal of the writ petition.

Having heard counsel for the parties, the short question that arises is that in view of the admitted factual premise would recovery be permissible?

In the considered view of this Court, such limited issue of recovery stands settled in favour of the petitioner in the light of the observations made by the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) R.S.J., 177***. The issue dealt with by the Apex Court was as regards recovery from employees where payment had mistakenly been made by the employer in excess of their entitlement and had culled out certain situations where recovery at the hands of the employer was held to be impermissible in law. Para 12 of the judgment in Rafiq Masih's case (supra) would be relevant and is reproduced hereunder:-

“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, summarize 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 recovery.”

In the considered view of this Court the limited prayer in the instant petition against recovery would be covered in favour of the petitioner in view of the dictum laid down by the Hon'ble Supreme Court in **Rafiq Masih's** case (supra). Concededly, petitioner was working on the post of Compressor Operator which is a Class-III post. Recovery has been directed within a period of one year from the date of superannuation of the petitioner. Furthermore, the recovery from the petitioner is being sought to be effected in relation to a period in excess of five years prior to the order of recovery being issued.

The action of recovery vide order dated 30.12.2016 (Annexure P-9), as such, cannot sustain.

For the reasons recorded above, writ petition is partly allowed. While upholding the re-fixation of pay vide order dated 15.11.2016 (Annexure P-8) the consequential action of recovery pursuant thereto is held to be bad in law.

It is further observed that in case the amount of Rs.1,44,868/- has been withheld by the respondent-Federation from the retiral benefits of the petitioner, the same would be released to him forthwith.

Statement of counsel representing respondents no.2 to 4 is recorded to the effect that the service rendered by the petitioner on ad hoc basis and prior to his appointment on regular basis i.e. we.f. 1.4.1987 would count for purposes of benefit of gratuity.

Writ petition is allowed.

Pending application(s), if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

03.02.2020
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No