

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 549 of 2021 (O & M)

Date of decision: 24.11.2021

214

The State of Haryana and others

....Appellant(s)

Versus

Sh. J.C. Sharma XEN (Retd.) and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Jagbir Malik, Addl. A.G., Haryana.

G.S.SANDHAWALIA, J. (Oral)

The challenge in the present letters patent appeal is to the order of the learned Single Judge dated 24.02.2020 passed in ***CWP No. 16053 of 2001, Sh. J.C. Sharma and others vs. State of Haryana and others*** wherein, the respondents have been restrained from making recovery of selection grade which had been granted to the writ petitioners beyond 20% of the cadre posts.

Counsel for the State has vehemently relied upon the judgment of the Apex Court in ***High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016 (4) SCT 286***. It is contended that a defence was taken as such by the State in its written statement that an affidavit had been given by the writ petitioners that they were to refund all the arrears which they received on getting the revised scale, if the decision of various petitions pending in this Court were decided against them. It is further submitted that the learned Single Judge has erred, as such, in placing reliance upon the judgment in the ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (1) RSJ 177*** to the extent that the

writ petitioners did not belong to Class 'III' and Class 'IV' or Group 'C' and Group 'D' employees and were well heeled being SDOs and XENs.

There is no dispute, as such, regarding the proposition which counsel for the State has expounded. However, learned Single Judge has noticed the length of litigation and the recovery that was sought to be effected vide instructions dated 24.01.2001 (Annexure R-II), which were also subject matter of challenge in the writ petition before the learned Single Judge. Apart from that, notifications dated 07.01.1998 and 07.08.1998 (Annexures P-5 and P-6) were also subject matter of challenge wherein, revised pay rules had come into force. It is to be noticed that notification dated 16.05.1990 (Annexure P-2) was the subject matter of challenge and the same had been stayed by the Division Bench of this Court on 01.06.1990. The legal effect in as much was that the selection grade which was to be restricted to 20% of the cadre posts was permitted to be paid to the other employees also. Eventually, ***CWP No. 8172 of 1990, H.R. Dhanjal and others vs. State of Haryana and others*** was dismissed on 17.08.2001 (Annexure P-8).

On an earlier occasion in CWP No. 18043 of 1998, this Court on 23.09.1999 had given the benefit of parity of the selection grade alongwith the Executive Branch, as per order dated 02.06.1989. The Apex Court in ***Civil Appeal No. 6585 of 2000, State of Haryana and others vs. Ishwar Singh and others*** decided on 20.11.2000 (Annexure P-4) had set aside the said order and directed that selection grade should be restricted to 20% of the posts in the cadre, as provided in the clarification dated 16.05.1990. In *H.R. Dhanjal's case (supra)*, which was dismissed on 17.08.2001 (Annexure P-8), the learned Single Judge also noticed that some of the petitioners would have died and the burden to return the money may be on legal heirs. Therefore, it was left to the State Government to

take a decision regarding waiving of the said amount paid to them. The relevant portion reads thus:-

“After hearing the counsel on this aspect of the case, I am of the view that petitioners are not entitled to any equitable consideration. Petitioners are drawing the extra amount because of interim order passed by this Court though the mistake that crept in order dated 2.6.1989 was corrected by issuing order dated 16.5.1990. However considering that some of the petitioners may have died and the burden to return the amount may fall on their legal representatives it would be in the fitness of things if the matter in this regard is left to the State Government to take a decision regarding waiving off the amount already paid to them. As regards the petitioners who may have retired or are serving they are liable to pay the amount which they continues to receive on account of interim order passed by this court because the interim order if any passed is always subject to the final decision of the writ petition.”

The petitioners then started apprehending the recoveries on the basis of notifications which were issued on 07.01.1998 and 07.08.1998 (Annexures P-5 and P-6) revising the pay. Interim orders were again passed granting the stay pursuant to the notices and the writ petition was admitted for hearing. The learned Single Judge, thus, has noticed that the petitioners would have retired and many would have expired and to make recovery at this stage would not be permissible while placing reliance upon para no. 12 of the judgment in *Rafiq Masih's case (supra)* while declining the other benefit of claiming parity of pay scales with HCS. For purposes of convenience, para no. 12 of the said judgment is reproduced 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.”*

As noticed above, the writ Court has exercised its extra ordinary writ jurisdiction to balance equities between the model employer being the State and the persons who were agitating for their grievances and the litigation spread over 3 decades having started in the year 1990. The effect of the order of the learned Single Judge is to put a quietus to all the issues of recovery. No doubt, the employees at that stage would have given the necessary undertakings and counsel for the State is justified in placing reliance upon the judgment in *Jagdev Singh's case (supra)*. However, in the considered opinion of this Court, the respondents,

as such, would now fall under clause no. 12(v) of the judgment in *Rafiq Masih (supra)* and it would be absolutely iniquitous, harsh and arbitrary to allow recovery at this stage. It would also out-way the equitable balance of the employer's right to recover the excess amount, which had been withdrawn by the writ petitioners who may be surviving. The selection grade would have been granted to them at the fag end of their career and, therefore, those who are still surviving would be in their late 80s or 90s. To burden them with recovery notices at this stage would be extremely harsh. Thus, the view taken by the learned Single Judge, as such, and having exercised the extra ordinary writ jurisdiction to grant the necessary relief is not liable to be interfered with in appeal, in the peculiar facts and circumstances of the present case.

Accordingly, the present letters patent appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

24.11.2021
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No