

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8882 of 2020

Pritpal Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP No.11254 of 2020

Ramesh Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CWP No.21948 of 2020

Shiv Shanker Sharma and others

...Petitioners

Versus

State of Punjab and others

...Respondents

Date of decision: 23.02.2021

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. R.K. Arora, Advocate and Mr. Jugam Arora, Advocate
for the petitioner(s).

Ms. Sunint Kaur, AAG, Punjab with
Ms. Jaswinder Kaur, Assistant Deputy Director Education.

Harsimran Singh Sethi, J. (Oral)

By this order, three writ petitions details of which have been given in the heading are being decided as the same question of law is involved in all three writ petitions.

For the purpose of this order, the facts are being taken from CWP No.8882 of 2020. The brief facts leading to filing of present writ petitions are that the petitioners were claiming that they were entitled for the grant of one increment for the non-participation in a strike call given by the Employees Union on 08.02.1978 keeping in view the instructions issued by the Punjab Government on 16.06.1978. Learned counsel for the petitioners submits that as the said benefit was not extended to the petitioners, they approached this Court claiming the said benefit by way of filing writ petitions, details of which have been given in para-6 of the present writ petition. Learned counsel for the petitioners argues that the writ petitions filed by the petitioners were allowed by this Court and a direction was issued to the respondents to grant them the benefit of increment and the said judgments have attained finality.

Learned counsel for the petitioners further argues that in some of the cases, where the similar relief was granted subsequently by this Court, the grant of the said benefit by this Court was challenged before the Hon'ble Supreme Court of India in Civil Appeal No.3487-3492 of 2004 which was ultimately decided on 12.02.2015. The Hon'ble Supreme Court of India has held that the employees who were not working on regular basis on the date of strike were not entitled for the grant of increment and in pursuance to the said decision, now after the retirement of the petitioners, the said increment is being withdrawn from them and the pay of the

petitioners has been refixed and the recovery is being ordered from the petitioners and that too without following rules of natural justice as no show cause notice has been given before passing the orders, which have been impugned in the present writ petitions.

Learned counsel for the petitioners submits that had the petitioners been served the show cause notice with the proposal of withdrawal of the increment which was granted to them on the direction given by this Court due to the non-participation in the strike dated 08.02.1978, the petitioners could have informed the respondents that said litigations between the parties have already attained finality and as the said increment was granted on the basis of the direction given by this Court and the State had not filed any appeal qua the grant of benefit by this Court hence, the recovery of the said increment is not only arbitrary and illegal and is rather contemptuous as the same will be against the direction given by this Court in the writ petitions filed by the petitioners, which judgments have already attained finality.

Upon notice of motion, the respondents have filed a short reply in CWP No.11254 of 2020 wherein, it has been stated that keeping in view the order passed by the Hon'ble Supreme Court of India in Civil Appeal Nos.3487-3492 of 2004 preferred by the State Government dated 12.02.2015 , the employees who were working on temporary basis at the time of strike on 08.02.1978 were not entitled for the grant of increment and, therefore, the benefit of said increment has been withdrawn from them and consequential recovery was ordered but, the orders of recovery which were passed, have been issued due to some communication gap and now the recovery orders issued to the retired employees have already been

withdrawn.

Learned State counsel assisted by Ms. Jaswinder Kaur, Assistant Deputy Director Education concedes that no show cause notices were issued prior to the passing of the impugned orders withdrawing the benefit of grant of increment and consequential re-fixation of the pay of the petitioners.

On being pointed out by this Court whether a benefit given to an employee can be withdrawn without following the rules of natural justice, the learned State counsel submits that she has instructions to state that no action on the basis of the impugned orders will be taken against the petitioners and the petitioners will be served a show cause notice keeping in view the facts of each case for withdrawal of the increment which has been given to them on the basis of the non-participation in the strike dated 08.02.1978 and only after considering the reply of the said employee, in case, it is found necessary to pass an order withdrawing the increment, the same will be passed afresh but, in any case, no recovery will be effected from the employee concerned if already retired keeping in view the settled principle of law.

Learned counsel for the petitioners submits that keeping in view the statement made by the learned State counsel, the grievance of the petitioners as raised in the present writ petitions is redressed at this stage and he does not press the present writ petitions any further and the same may be disposed of as such.

Keeping in view the above, all the three writ petitions stand disposed of having been not pressed keeping in view the statement made by the learned counsel for the respondents.

Keeping in view the statement of the learned State counsel recorded hereinbefore, the respondents will be at liberty to pass a fresh order after giving due opportunity of hearing to the petitioners by serving them a show cause notice.

February 23, 2021

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No