

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

LPA No. 780 of 2021

Date of Decision : September 23, 2021

Sumer Singh and others

.....Appellants

VERSUS

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present : Mr. S.K.Malik, Advocate
for the appellants.

JASGURPREET SINGH PURI. J.

Case has been taken up on Video Conferencing in view of
COVID-19 Pandemic.

The present Letters Patent Appeal has been filed assailing the interim order passed by the learned Single Judge dated 19.8.2021 in CWP No. 16002 of 2021. The learned Single Judge declined to grant stay on the recovery from the appellants/petitioners on the ground that the order by which the appellants/petitioners were granted the benefit of consequential benefits was immediately rectified on the very next day by which they were granted only notional benefits.

A very brief factual background would require consideration in the present case.

All the appellants/petitioners are Class-IV employees and their services were regularized on 21.4.2017 except for petitioner No.4

whose services were regularized on 16.9.2019. Thereafter they sought the benefit of regularization w.e.f. the year 2014. as according to them, their juniors were regularized in the year 2014 and they were entitled for being regularized from the same date. Thereafter vide Annexure P-2 dated 30.12.019 they were granted the date of regularization from the year 2014 i.e. 19.8.2014 with all consequential benefits i.e. pay fixation and seniority.

However, immediately on the next day i.e. 31.12.2019 another order was passed by the same authority in which the previous order of 30.12.2019 was rectified and was partially modified. It was stated in the aforesaid order dated 31.2.2019 that some of the employees were given ante dated regularization who were not eligible and out of 39 Class-IV only 28 were eligible and, therefore, the earlier order was immediately reconsidered and reexamined and a fresh order was passed immediately on the next day. The appellants/petitioners were found to be eligible as per the list in the aforesaid order. However, it was specifically stated in the order that so far as the concerns of the consequential benefits are concerned, the same has been granted to them **notionally**. In this way, the earlier order dated 30.12.2019 was not only partially modified but also clarified that the consequential benefits are only notional in nature. The petitioners then filed writ petitions aggrieved by the order dated 31.12.2019 wherein the benefits of consequential benefits granted on 30.12.2019 have been modified/clarified to be notional in nature apart from challenging the recovery notices.

After passing of few months of order dated 31.12.2019, the

Principals/Headmasters at the field level acted upon the earlier order dated 30.12.2019 and fixed the pay of the petitioners by granting back wages/arrears, consequential benefits vide Annexure P-3 i.e. orders dated 20.3.2020, 13.3.2020, 2.3.2020, 26.2.2020, 31.5.2020 (colly). These orders of fixation of pay were based upon the order dated 30.12.2019 which stood modified the very next day vide order dated 31.12.2019 and, therefore, the orders passed by the Field Officers were based upon the orders which were not even in existence.

We have heard the learned counsel for the appellants.

Learned counsel for the appellants has submitted that once the Government has granted some benefits to its employees then the same cannot be recovered after some time even if the grant of benefits was by way of mistake. He has further submitted that some of other similarly situated persons had filed different petitions in which interim order has been passed and, therefore, the appellants were entitled for interim stay.

So far as the first argument raised by the learned counsel for the appellants is concerned, from a perusal of order dated 30.12.2019 (Annexure P-2) and order dated 31.12.2019 (Annexure P-5) it becomes clear that on the very next date the modification was carried out by the competent authority i.e. District Education Officer but after a few months the Field Staff acted upon the order dated 30.12.2019 and fixed the pay of the appellants and thereafter the appellants started getting an amount so paid to them. However, the order dated 30.12.2019 to the extent of granting of consequential benefits/pay fixation was not in existence as the same stood modified/rectified vide order dated 31.12.2019 whereby it

was ordered that the regularization would entail the consequential benefits on 'Notional basis'. Therefore, it was not a case where the payment was made in excess of their entitlement but it was a case where they were not entitled by virtue of order dated 31.12.2019 but still the Field Staff paid them by ignoring the order dated 31.12.2019 and the grant of consequential benefits for pay fixation and arrears was not in existence at the time when the same was disbursed to the appellants. Furthermore, the action of fixation of pay was not done by the employer but only by the Field Staff of their own. Therefore, the argument raised by the learned counsel for the appellants is not sustainable.

So far as the other argument raised by the learned counsel for the appellants that the other similarly situated persons have been granted interim protection in other writ petitions, he has not been able to show as to whether those other cases were factually at par with the present case or not. The petitioners/appellants shall always be at liberty to file an appropriate application before the learned Single Judge in this regard.

Therefore, finding no perversity or illegality in the order passed by the learned Single Judge, the present appeal being devoid of merit is, hereby, dismissed.

(RAJAN GUPTA)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

September 23, 2021

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