

Raj Ralhan

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.J.S.Maanipur, Advocate,
For the petitioner.

Mr. R.D. Sharma, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing orders dated 06.09.2002(Annexure P-8), 14.05.2001 (AnnexureP-4), 11.06.2001 (AnnexureP-5)and 10.08.2001 (Annexure P-6)whereby the benefit of Special Pay granted to the petitioner while re-fixing his pay on promotion has been withdrawn andrecovery was ordered.

2. First, succinct factual background as pleaded in the petition. Petitioner was appointed as Steno Typist in the Police Department, Haryana on 06.02.1976. She was promoted as Junior Scale Stenographer on 05.10.1978 and was further promoted as Senior Scale Stenographer in the year 1982. Vide order dated 07.12.1982 (Annexure P-1), pay of the petitioner was fixed while taking into consideration her Special Pay of Rs.50/- as per Instructions. In the year 1993, petitioner was transferred to the Office of Director Vigilance Bureau, Haryana, Chandigarh. Vide letter dated 14.05.2001, Home Department informed the Director General of Police, Haryana, Chandigarh that for the purpose of fixation of pay in the re-fixation in the substantive /presumptive pay only basic pay is counted. Special pay is not included at the time of re-fixation. Advice of Finance

Department has been obtained in this regard. On 11.06.2001, vide Annexure P-5, the respondents ordered for re-fixing her pay after excluding the special pay and also ordered for recovery of the excess amount which had been paid to her from 1981 till the date of passing of the impugned order. In pursuance of Annexures P-4 and P-5, respondent No.2 has withdrawn the benefit of special pay and re-fixed her pay, and reduced her pay from Rs.600/- to Rs. 570/- w.e.f. 01.04.1981 and subsequent reductions have also been carried out. Thereafter petitioner caused issuance of a legal notice dated 01.02.2002 (Annexure P-7) but to no avail. Hence, the instant petition.

3. Petitioner claims that she has not made any misrepresentation before respondent Department, and therefore, recovery cannot be effected from her in view of the law laid down by the Apex Court in the case of **Sahib Ram versus State of Haryana**.

4. While issuing notice of motion vide order dated 16.01.2003, it was ordered that recovery shall not be effected.

5. Petition was admitted for hearing on 14.07.2003.

6. I have heard learned counsel for the parties and gone through the case file.

7. I am of the opinion that the recovery sought to be made would be inequitable, harsh, and arbitrary and would far outweigh the equitable balance of the employer's right to recover. In view of the law laid down in **State of Punjab and others versus Rafiq Masih**, reported as **AIR 2015 (SC) 696**, no recovery can be effected from the petitioner on the basis of impugned order dated 11.06.2001 (Annexure P-5) she being a Class-III employee. Relevant extract from the same is reproduced herein below:

“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 made, 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.”*

8. In the aforesaid premise, impugned recovery cannot be effected from petitioner, she being Class-III employee at the relevant time.

9. As a result of above discussion, the petition is allowed to the limited extent that the impugned recovery order dated 11.06.2001 (Annexure P-5) issued to the petitioner shall stand quashed. This order shall not operate as a precedent and the same is being passed in the peculiar facts and circumstances of the present case.

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

(ARUN MONGA)
JUDGE

November 14, 2022
vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No