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

CWP No. 12967 of 1997

DATE OF DECISION: 21.04.2022

Dr. Sham Lal Arya and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present:- None for the petitioners.

Mr. R. K. S. Brar, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)

Under challenge herein is impugned order dated 14.08.1997 (Annexure P-5) vide which pay of the petitioner was directed to be re-fixed and pursuant thereto necessary exercise was carried out and as a consequence thereof, recovery orders were passed qua the petitioners, which are impugned herein.

2. Succinct facts first. Petitioners were appointed through employment exchange and they joined respondent-department on different dates. Government of Haryana issued instructions on 08.02.1994 vide which those employees who had completed 10 years or more service or 20 years or more of regular satisfactory service, were to be granted first higher standard pay scale and second higher standard pay scale to remove stagnation in their pay scales. Petitioners approached respondent No.3 for grant of first higher standard scale on the ground that their junior, namely, Subhash Chand Goel, Analytical Assistant was also granted higher pay scale of Rs.1640-2900 in place of Rs.1400-2600.

Due to implementation of instructions *ibid*, it created hurdles in stepping up of pay scales of senior to the level of their junior employees in their cadre. The finance department vide letter dated 29.12.1995 (Annexure P-2) clarified to grant higher standard pay scale and petitioners were accordingly granted first higher standard pay scale. However, the said order was withdrawn vide letter dated 04.08.1997 (Annexure P-5).

3. Petition was admitted on 09.12.1998.

4. Perused.

5. 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 AIR 2015 (SC) 696***, no recovery can be effected at this stage. Relevant extract from the same is reproduced hereunder :

“ 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 already 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.”

6. In the aforesaid premise, impugned recoveries cannot be effected from petitioner, he being Class-III employee at the relevant time.

7. Accordingly, the impugned recovery order to the extent the same is sought to be effected retrospectively is quashed and writ petition is disposed of accordingly.

(ARUN MONGA)
JUDGE

April 21, 2022
Shalini

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No