

379

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

CWP No. 13045 of 1997

DATE OF DECISION: 21.04.2022

Chander Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present:- None for the petitioner.

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

ARUN MONGA, J. (ORAL)

Petitioner herein *inter alia* seeks setting aside of impugned order dated 03.06.1997/09.07.1997 (Annexure P-8) vide which respondent No.2 proceeded to withdraw order dated 17.05.1994 (Annexure P-4) whereby higher standard scale had been granted to the petitioner with effect from 01.01.1994 and further to grant consequential benefits to the petitioner.

2. Succinct facts first. Petitioner was appointed as Clerk on 24.5.1973 on *ad hoc* basis vide appointment letter dated 21.5.1973 (Annexure P-1). His appointment was made against a regular post through selection from amongst the candidates sponsored by Employment Exchange. In due course, being qualified and eligible, the petitioner was allowed to cross the efficiency bar from due date i.e., 1.5.1979. Thereafter services of the petitioner were regularized with effect from 1.1.1980. He was also given the benefit of increments earned during the *ad hoc* period i.e., from 24.5.1973 to 31.12.1979. Earlier the petitioner was employee of Haryana Industries Directorate, however, upon trifurcation of said Directorate, on 27.8.1989 he came over the newly created Directorate of Mines and Geology. He was then promoted to Assistant with effect from 1.2.1990. Vide notification dated 7.8.1992, introducing additional proficiency step up increments to be given to all Groups C and D employees on completion of 8/18 years of regular satisfactory service. Vide order dated 14.9.1992, he was granted two

additional increments with effect from 1.7.1992 and his pay was enhanced from Rs.1400/- per month to Rs.1500/- per month. Subsequently another notification dated 8.2.1994 (Annexure P-3) was issued introducing time bound higher standard scale to the employees belonging to Groups C and D from 1.1.1994. Vide order dated 23.1.1996, both the above benefits granted to the petitioner were withdrawn and his pay was reduced retrospectively from 1.7.1992.

3. Feeling aggrieved, petitioner approached this Court by filing CWP No. 3459 of 1996 and this Court stayed the impugned recovery vide order dated 08.03.1996. Vide order dated 22.5.1996, order dated 07.02.1996 was quashed and all consequential benefits were ordered to be given to him. It was also observed that while passing any fresh orders, respondents shall afford an opportunity of hearing to the petitioner. Pursuant thereto, the respondent withdrew the earlier order dated 7.2.1996 and show cause notice dated 17.1.1997 (Annexure P-6) was issued. Petitioner filed reply to the same and consequently, order dated 17.5.1994 was withdrawn vide impugned order Annexure P-8.

4. Petition was admitted on 14.01.1998.

5. Perused.

6. 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.”

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

8. 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.

APRIL 21, 2022

Shalini

(ARUN MONGA)

JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No