

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

CWP-12416-2001 (O&M)

Date of decision: July 26, 2022

Daljit Singh and others

...Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Shubham Saroha, Advocate
for Mr. S.P. Laler, Advocate
for the petitioners.

Mr. R.D. Sharma, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter-alia*, is for issuance of a writ in the nature of Certiorari to quash order dated 30.01.2001 (Annexure P-5) reducing pay-scales of the petitioners received w.e.f. 01.01.1994 and subsequent orders of recovery dated 22.06.2001 (Annexure P-6) and dated 05.07.2001 (Annexure P-7).

2. Succinct facts first. Petitioners completed 18 years of service as Clerk. State of Haryana issued instructions dated 07.08.1992 granting advance increments on completion of 8 and 18 years of service. On 05.02.1996, the Finance Department allowed the benefit of additional increments for Group C & D employees on completion of 8/18 years of satisfactory service and later on condition of regular satisfactory service was removed and replaced by service vide instructions dated 07.08.1992.

Thereafter, on 20.08.1996, the State issued instructions to the effect that ad hoc service will be counted for the purpose of grant of advance increment on completion of 8/18 years of service. Later on, the State issued instructions dated 08.02.1994 for granting Higher Standard Pay Scales to its employees on completion of 10 & 20 years of service to Group C & D group employees. With the revision of pay scales, the State then issued instructions dated 07.01.1998 for grant A.C.P. pay scale on completion of 10/20 years of service. Petitioners were not granted advance increments on completion of their 8 years service in compliance of the instructions dated 07.08.1992 except petitioner No.3-Roshan Lal, who was granted only one advance increment instead of two. All the petitioners except petitioner No.3 were granted the benefit of First Standard Pay Scale and petitioner No.3 were granted the benefit of Second Standard Pay Scale. In this way, all the petitioners were granted First Higher Standard Pay Scale w.e.f. 01.01.1994 as they all had completed more than 10 years of service by that date by including their adhoc service. However, later on, the State issued notice to the petitioners claiming their adhoc service was wrongly included for the purpose of pay fixation and vide impugned order dated 30.01.2001 withdrew the First Higher Standard Pay Scale granted to the petitioners and started recovery of the excess amount already paid.

3. I have perused the pleadings and gone through the record.

4. Without going into the merits of the amount sought to be recovered, it has to be first noticed as to whether the pay fixation of the petitioners were wrongly done owing to which they were paid certain excess amount liable to be recovered. I am of the view that a mere fact that at the

relevant time the petitioners were working as a Class-III employee, there is a legal presumption that they were not in a position to influence their superiors to pay them any excess amount. Further, if the pay was wrongly fixed it is entirely attributable to the superiors of the department and the petitioners cannot be made to suffer to pay for no fault of them. There is nothing on record and even otherwise to show that the petitioners have indulged in any concealment, fraud or any misrepresentation of any kind which led to wrong fixation of their pay. In this aspect, reference may be had to the Supreme Court judgment titled as ***State of Punjab and others vs. Rafiq Masih (White Washer) etc.***, (2015) 4 SCC 334, the relevant para thereof is reproduced herein below:-

“12. 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 may, 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.”

5. Perusal of the above clearly reflects that wrong fixation of pay of the petitioners is insignificant as long as there was no misrepresentation on the part of the petitioners. I see no reason why the principles enunciated in Rafiq Masih’s case *ibid* cannot be applied in the present case and benefit thereof be not given to the petitioners.

6. Petition is allowed to the extent that excess amount already paid to the petitioners cannot be recovered from them.

(ARUN MONGA)
JUDGE

July 26, 2022
ashish

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