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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-13947-1999

Date of decision: August 29, 2022

Vishnu Shankar

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None 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 impugned order dated 31.08.1999 (Annexure P-5) whereby pay of petitioner has been reduced and recovery ordered.

2. Succinct factual background first. Petitioner passed his matriculation examination in the year 1964 from Uttar Pradesh and secured his ITI Diploma from Karnal in the year 1967. He was appointed as Helper i.e. a Group 'D' post in June 1972 in Haryana Roadways. He was promoted as Assistant Electrician which is a Class 'C' post in April 1973 in the pay scale of Rs.120-250 being a technical post. He was further promoted as Electrician in October, 1981 in the same pay scale and his pay was again revised w.e.f. 01.01.1986. He was granted higher standard pay scale of Rs.1400-2600 w.e.f. 01.06.1994 vide order dated 04.09.1996 (Annexure P-2) in view of the Government instructions dated 08.02.1994 (Annexure P-1).

The Haryana Government vide its notification dated 07.01.1998 revised the

pay scale of its employees w.e.f 01.01.1996 and his pay was fixed at Rs.5300/- in pay scale of Rs.5000-8000 vide order dated 29.04.1998 (Annexure P-3). His pay was revised to Rs.5450/- as basic pay as on 12.02.1997 vide order dated 21.04.1999 (Annexure P-4). Now, vide order dated 31.08.1999 (Annexure P-5) the pay of the petitioner has been reduced to Rs.5200 as on 01.01.1999 without any notice or opportunity of hearing. In pursuance of aftermentioned order respondents sought to make recovery. Hence the instant petition.

3. Learned State Counsel opposes the prayer of the petitioner and states that applicant had already availed two upgradations and therefore he cannot be granted benefit of ACP from 01.01.1996 as per rules dated 07.01.1998 and hence recovery was ordered.

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

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**, reported as **AIR 2015 (SC) 696**, no recovery can be effected from a Class-III employee on the basis of impugned order dated 02.02.1988 (Annexure P-5). 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.”

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

7. As a result of above discussion, the petition is allowed to the limited extent that the impugned recovery notice dated 31.08.1999 (Annexure P-5) issued to the petitioner shall stand quashed.

8. Photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

August 29, 2022

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No