

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

CWP NO. 14510 of 1999 (O&M)

DATE OF DECISION: 18.05.2022

Jasmer Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Shivam Chaudhary, Advocate for
Mr. S.P.Laler, 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 mandamus directing the respondents to grant additional increment on completion of 8/18 years' service in accordance with the letter dated 07.08.1992 (Annexure P-2) w.e.f. 01.07.1992 and also to grant standard pay scale on completion of 10/20 years' service.

2. Succinct facts first. Petitioner joined as 'Panchayat Secretary' in Block Samiti in the year 1963. He was adjusted as Tax Collector on 24.12.1969. Services of the petitioner were taken over by the Government of Haryana on 03.05.1972 w.e.f. 01.05.1972. He was granted the benefits of additional increments on completion of 8/18 years' service and 10/20 years' service on 07.08.1992 and 08.02.1994 respectively. The pay scale of Rs.1600-2600 granted to the petitioner was withdrawn vide impugned letter dated 16.09.1996 (Annexure P-4). Hence, the writ petition.

3. Learned counsel for the petitioner submits that now petitioner has retired on attaining the age of superannuation. He submits

that impugned letter (Annexure P-4) had been issued without anyshow-cause notice/without affording any opportunity of hearing to the petitioner. Moreover, the excess amount, if any, was not paid on account of any misrepresentation or fraud of the petitioner.

4. Learned State counsel strenuously opposes the writ petition. He submits that petitioner was appointed as Gram Sachiv on *ad hoc* basis and his salary was drawn from the Panchayat Samiti Funds and not from the Government Fund. He submits that petitioner is not entitled to benefit of higher pay scale, as is borne out from paras 6 and 7 of the reply on merits.

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

6. While issuing notice of motion on 12.10.1999, recovery from the petitioner was stayed. Vide order dated 07.02.2003, while admitting the case, stay was ordered to be continued.

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 AIR 2015 (SC) 696***, no recovery can be effected at this stage. 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, he being Class-III employee at the relevant time.

9. 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.

18.05.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No