

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

CWP NO. 17130 OF 1997

DATE OF DECISION: 21.04.2022

Parveen Sharma, Clerk

...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, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* seeks issuance of a writ in the nature of certiorari to quash impugned orders dated 06.01.1997 and 04.11.1997 (Annexures P-4 and P-8 respectively), vide which services of the petitioner had been regularized w.e.f. 01.01.1991 whereas she is entitled from the date of her joining i.e.08.03.1984.

2. Succinct facts first. Petitioner was appointed as Coder through Employment Exchange in the office of Census Operations (Haryana), Chandigarh. Thereafter she worked on the posts of Checker and Supervisor till she was retrenched vide order dated 29.02.1984 after the completion of census operations. Policy circular was issued on 25.02.1983 for absorption of retrenched employees/surplus staff from the Census Department in Class III and IV services. Later he joined as Clerk in the Transport Department and was posted in Government Central Workshop, Chandigarh vide appointment letter dated 06.03.1984 (Annexure P-1). He continued after probation on above post for two

years extendable upto maximum of three years. A tentative joint seniority list of Clerks dated 18.03.1998 was circulated wherein petitioner's name was not mentioned. Vide order dated 14.07.1988, she was granted seniority from the date of her joining the transport department. She was allowed the benefit of one additional increment in her own pay scale after 08 years of regular satisfactory service. Petitioner received impugned order dated 06.01.1997 (Annexure P-4) from the second respondent regularizing her services w.e.f. 01.01.1991 on the premise of completing two years of *ad hoc* service on 31.12.1990. Aggrieved by the aforesaid order, petitioner submitted detailed representation dated 27.02.1997 (Annexure P-5) seeking an opportunity of personal hearing. Later vide order dated 06.03.1997 (Annexure P-6), she was granted first higher standard grade with effect from 01.04.1994 on completion of 10 years of regular satisfactory service. Arrears were accordingly paid to her. However, vide impugned order dated 04.11.1997 (Annexure P-8), grant of higher standard grade was withdrawn. Hence the petition herein.

3. Perused.

4. 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."*

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

6. 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 :
Whether reportable :

Yes/No
Yes/No