

Surinder Rani

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.K.Daaria, 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 Certiorari for quashing orders dated 26.06.2003(AnnexureP-6), whereby the benefit of 2nd Assured Career Progression (ACP) granted to the petitioner was withdrawn and recovery ordered.

2. First, succinct factual background as pleaded in the petition. Petitioner was initially appointed as Clerk on adhoc basis on 07.09.1979. Her services were regularized w.e.f. 15.09.1982. Thereafter she was granted 1st and 2nd Higher Standard pay scale on completion of 10 years and 20 years of service respectively in view of the policy contained at Annexure P-1. On revision of pay scale w.e.f. 01.01.1996, the pay of the petitioner was revised and refixed in the pay scale of Rs 5000-7850 i.e., she was granted her first and second ACP in the revised scale. As a bolt from the blue, petitioner was informed vide order dated 10.09.2001 (Annexure P-2) that 2nd ACP granted to her was to be withdrawn and recovery be made @1/3rd of basic pay as service rendered on adhoc basis is not to be counted at the time of determining length of service for grant of ACP scales. Aggrieved, she challenged the abovesaid order, and vide order dated 18.02.2003 (Annexure P-3) passed by

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this Court, the said order was quashed and liberty was granted to the respondents to pass a fresh order after affording an opportunity of hearing to the petitioner and after serving a show cause notice in this regard. Petitioner was served with show cause notice dated 02.04.2003 (Annexure P-4) and she submitted her reply to the show-cause-notice on 23.04.2003 (Annexure P-5). Thereafter, vide impugned order dated 26.06.2003 (Annexure P-6) benefit of 2nd ACP granted to the petitioner was withdrawn. Hence, the instant petition.

3. Petitioner claims that she has not made any misrepresentation before respondent Department, and therefore, recovery cannot be effected from her in view of the law laid down by the Apex Court in the case of **Sahib Ram versus State of Haryana**.

4. While issuing notice of motion vide order dated 11.07.2003, recovery sought to be made was ordered to be stayed.

5. Petition was admitted for hearing on 07.02.2005.

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

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**, reported as **AIR 2015 (SC) 696**, no recovery can be effected from the petitioner on the basis of impugned order dated 26.06.2003 (Annexure P-6) she being a Class-III employee. 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, she being Class-III employee at the relevant time.

9. As a result of above discussion, the petition is allowed to the limited extent that the impugned recovery order dated 26.06.2003 (Annexure P-6) issued to the petitioner shall stand quashed. This order shall not operate as a precedent and the same is being passed in the peculiar facts and circumstances of the present case.

10. In view of the aforesaid, it is also expected of the respondents that if owing to the impugned order any retirement benefits of the petitioner were withheld, the same shall also be released within a period of 60 days subject of course if already not released.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

November 22, 2022
vandana

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