

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

CWP No. 5452 of 1997 (O&M)

DATE OF DECISION:18.04.2022

Kapoor Singh deceased through his LRs	...Petitioners
Versus	
State of Haryana and others	...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.A. Sheoran, Advocate,
for the petitioners.

Mr. R.K.S. Brar, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Under challenge herein is impugned order dated 08.07.1996 (Annexure P-8) vide which pay of the petitioner was directed to be re-fixed and pursuant thereto necessary exercise was carried out and as a consequence thereof, recovery orders were passed qua the petitioner, which is impugned herein.

2. Succinct facts first. Petitioner was appointed as Pump Operator in the scale of Rs.90-3-120 on 01.12.1977. In the year 1980, the grades were revised w.e.f. 01.04.1979 but these were granted to the work charge employees w.e.f. 01.04.1982. The work charge employees through their Union filed CWP No.6044 of 1983 and the writ petition was decided on 02.06.1989. When Government did not take any action, the petitioner along with other persons filed another writ petition No.6444 of 1991 which was allowed with costs of Rs.3,000/- on 03.09.1991. Thereafter respondents re-fixed the pay of the petitioner in the scale of Rs.100-4-140-5-160 instead of 130-4-150-5-160-5-180 on 29.08.1994. Contempt notice dated 02.01.1995 was sent by the petitioner through his counsel and the respondents eventually fixed the grade of the petitioner in the scale of

Rs.130-180 with effect from his appointment. Respondent No.4 without giving any opportunity of hearing to the petitioner vide impugned order dated 08.07.1996 (Annexure P-8) re-fixed the pay of the petitioner in the scale of Rs.100/- from the scale of Rs.130/- by mentioning that petitioner was initially appointed in the scale of Rs.60-3-90 and entry in the service book has been wrongly made as Rs.130-4-150-5-180. From the revised pay scale, the petitioner is entitled for the scale of Rs.400-600 w.e.f. 01.04.1979 and again Rs.480-760 w.e.f. 01.02.1981. Hence, the instant petition.

3. Heard.

4. Para 4 of the reply filed by respondents No.1 to 5 clearly conveys that there was no misrepresentation on behalf of the petitioner as has been argued and also pleaded in the petition. Para 4 of the reply is reproduced herein below:

“That in reply of para No.4, it is submitted that petitioner was erroneously and wrongly allowed the pay scale of Rs.130-180 and this mistake was rectified on 07.09.1983 as per entry existed at page-7 and 8 of the part-I of the service book of the petitioner.”

5. Perusal of the above, it is clear that there is a candid admission on the part of the department that higher pay was given erroneously on their part and not on the basis of any misrepresentation on the part of the petitioner.

6. 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.”

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

8. 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 18, 2022

vandana

(ARUN MONGA)

JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No