

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

CWP-1874-2003 (O&M)

Date of decision: November 09, 2022

Ramesh Kumar

.....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 order dated 20.12.2002 (Annexure P-5) whereby recovery of Rs.7,557/- has been ordered to be made from the pay of the petitioner as the amount has been paid to him in lieu of House Rent Allowance. Further, a writ has been sought seeking direction to the respondents to grant House Rent Allowance to the petitioner being eligible as per the basic instructions for HRA dated 11.09.1965 and 11.08.1998 (Annexures P-3 and P-4), respectively adopted by the State Government from time to time.

2. First, succinct factual background as pleaded in the petition. Petitioner was appointed as Sweeper-cum-Chowkidar by the Headmaster, Govt. High School, Israna (Boys) District Panipat vide letter dated 19.06.1995 (Annexure P-1/translated copy) being competent authority to appoint Class-IV employees as envisaged in The Haryana State Secondary

Education Field (Group-D) Service Rules, 1998 by which the services of the petitioner are governed. Petitioner was transferred to the office of Sub Divisional Education Officer, Gohana (Sonapat) vide order dated 11.10.2000 (Annexure P-2) and since then he is discharging his duties as Sweeper-cum-Chowkidar. State Government adopted basic instructions issued by the Finance Department, Punjab, which were further amended vide order dated 11.09.1965 (Annexure P-3) for House Rent Allowance, whereby, petitioner is entitled for the House Rent admissible to the employees of Sub Division Gohana (Sonapat), which falls in "B" Class City. Finance Department, Haryana vide letter dated 11.08.1998 (Annexure P-4) revised the rate of House Rent Allowance admissible to the State Govt. Employees. Being Sweeper-cum-Chowkidar petitioner does sweeping/ cleaning of the office before opening and after its closing for the day. Further, after closing and till the opening of the School on the next day, petitioner discharges his duties as a Chowkidar and keeps himself vigilant for this entire period of the day. Petitioner is also allotted a room adjacent to the office, which is not meant for residential purpose and he has not been allotted any accommodation for residential purposes.

Respondent No.3-Sub Divisional Education Officer, Gohana (Sonapat) vide letters dated 07.11.2001 and 22.11.2001 asked the petitioner to deposit rent of the aforesaid room in which he used to keep his brooms, torch and sticks etc. required to perform his duties. He was ordered to deposit Rs.3,912/- in lieu of licence fee of the room and was also ordered to deposit Rs.3,645/- in lieu of House Rent paid to him @ Rs.135/- per month w.e.f. October, 2000 to 31.12.2002. A total amount of Rs.7,557/- was asked to be

deposited as recovery, otherwise the same was ordered to be deducted from the pay of the petitioner. He was also asked to vacate the said room meant for the purpose of Store. Complete salary of the petitioner for the month of December, 2002 has been deducted by the pay Clerk working in the office of respondent No.3. Aggrieved, petitioner moved representation dated 09.01.2003 (Annexure P-6) *qua* his grievance. Employees working on the same post prior to the petitioner were granted the House Rent Allowance. Petitioner claims that he has not made any misrepresentation before respondent-Department, therefore, recovery cannot be effected from him in view of the law laid down by the Apex Court in the case of **Sahib Ram versus State of Haryana** (Annexure P-7) and in the case of **Sate of Punjab and others versus Ishar Singh and others** (Annexure P-8). Hence, the present writ petition.

3. There is no representation on behalf of the petitioner. I have heard learned State counsel and gone through the case file.

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**, reported as **AIR 2015 (SC) 696**, no recovery can be effected from the petitioner on the basis of impugned order dated 20.12.2002 (Annexure P-5) he being a Class-IV 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."*

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

6. As a result of above discussion, the petition is allowed to the limited extent that the impugned recovery order dated 20.12.2002 (Annexure P-5) 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.

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

(ARUN MONGA)
JUDGE

November 09, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No