

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

CWP-3009-2001 (O&M)

Date of decision: May 25, 2022

Kishan Chand and another

.....Petitioners

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.S. Hooda, Advocate for the petitioners.

Mr. R.D. Sharma, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition was filed in the year 2001, *inter alia*, for issuance of a writ in the nature of Certiorari for quashing the impugned action/ order of the respondents by which the pay of the petitioners has been reduced and recovery has been ordered to be affected from the petitioners in violation & against the principal of natural justice as the action of recovery was taken without affording an opportunity of hearing and also against the law laid down by the Hon'ble Supreme Court in the matter of **Sahib Ram versus State of Haryana** reported as **1995(2) RSJ 139**. Further a writ in the nature of Mandamus has been sought to grant the same pay to the petitioners as they were drawing earlier i.e. before the impugned action of recovery.

2. Petition was admitted for hearing on 12.09.2001.

3. When taken up for final adjudication, after around 21 years, learned counsel is unable to assist the Court for lack of instructions. Learned counsel for the petitioners states that despite attempts, his office could not

contact the petitioners. In the premise, no useful purpose would be served to issue fresh notice to the petitioners as the same too would be an exercise in futile. Even the addresses of the petitioners are also perhaps not complete as is borne out from the memo of parties.

4. It transpires that petitioners would be currently 86 years of age or perhaps even more as the exact date is not borne out from the writ petition.

5. It seems that by sheer effluxion of time and pendency of the writ petition for more than 21 years before this Court, either it has been rendered infructuous or even otherwise the petitioners seem to have lost interest in pursuing the same.

6. In any case, it appears that even on merits, claim of the petitioners is not admissible in view of the following stand taken in Paras-1 to 3 of the preliminary objection of the reply filed by respondents No.1 & 2, which is reproduced herein for ready reference:-

“1. That the pay of petitioner No.1 has been refixed w.e.f. 1.4.95 on modification scale vide Financial Commissioner & Secretary to Govt. letter No. (F.D.) No.1/34/93-4PR (FD) dated 9.5.95 (Annexed as Annexure R-I) on the clarification made by the Accounts Officer Irrigation Department, Karnal and vide Note 4 below of Rule 4.4 C.S.R. Vol. I. Part-I.

2. That the pay of petitioner No.2 has been refixed as per Notification No.GSR-4/Const./Art 309/98 dated 7.1.98 of A.C.P. Rules 5 of 1998 (Eligibility for grant of A.C.P. Scales.

3. That as per Govt. Notification No.1/1/98-IPR (FD) dated 13.1.98 (Copy annexed as Annexure R-II. It was laid down in Para No.5 & 6 of Notification issued by the Govt. to obtain an undertaking for each employee to the effect “that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies as noticed subsequently will be refunded by me to the Govt. either by adjustment against future payment to me otherwise”. The undertaking of the petitioner has been pasted in the service book (copy annexed as Annexure R-III & IV) to VI.”

7. Learned State counsel has canvassed arguments on the similar lines as the stand taken in the aforesaid written statement.

8. I am in agreement with the stand taken by the respondents as aforesaid. Neither any replication has been filed to the afore-noted stand of the respondents nor any additional affidavit of any kind to controvert the same.

9. However, as regards the impugned recovery vide impugned order dated 07.07.2000 (Annexure P-1), which was contemplated by the Department, but could not be effected due to the interim order dated 01.03.2001 passed by this Court before the writ petition was admitted for hearing is now impermissible. In the interregnum, Supreme Court has rendered a judgment in **State of Punjab and others** versus **Rafiq Masih**, reported as **AIR 2015 (SC) 696**, wherein following principles *qua* recovery have been enunciated:-

“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.”

10. In view of the aforesaid, concededly, there was no misrepresentation on the part of the petitioners *qua* the excess amount paid to him which is sought to be recovered vide impugned order.

11. In the premise, to the extent of recovery as proposed vide impugned order, the same is quashed. Department would not make any recovery, accordingly.

12. Disposed of in above terms.

(ARUN MONGA)
JUDGE

May 25, 2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No