

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

CWP-6963-2001 (O&M)

Date of decision: July 13, 2022

Sukhdev Raj Sharma

...Petitioner

Versus

The State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jagdish Manchanda, Advocate
for the petitioner.

Mr. R.D. Sharma, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari to quash order dated 04.01.2000 (Annexure P-5), passed by respondent No.4, whereby the benefit of adhoc service rendered by the petitioner, has been withdrawn and the recovery of the amount has been ordered to be effected. Petitioner is also seeking directions to the respondents to count his service rendered in Kurukshetra University for the purpose of leave, increments and A.C.P. Grade.

2. Succinct facts first. Petitioner was appointed as Steno-typist in the Treasury Office, Kurukshetra on adhoc basis. While in service the petitioner applied for the post of Clerk to the Haryana S.S.S. Board through proper channel. On 02.05.1978, the services of all the adhoc employees in the State of Haryana including the petitioner were terminated. In July, 1978 the petitioner was appointed as a Clerk in the Kurukshetra University which

was an autonomous body. The scale in Kurukshetra University as well as in Treasury Office, Kurukshetra was identical. The petitioner remained there until he was appointed as Clerk on 09.07.1981 in the office of the Excise and Taxation, Haryana on regular basis through Haryana S.S.S. Board. On 08.10.1982 the petitioner was transferred in the office of Deputy Excise and Taxation Commissioner, Kurukshetra and thereafter in September, 1993 he was transferred in the office of Deputy Excise and Taxation Commissioner, Karnal. On 02.08.1994, the Deputy Excise and Taxation Commissioner, Karnal-respondent No.3 had counted the service of the petitioner rendered in Treasury Office, Kurukshetra as well as Kurukshetra University for the purpose of granting benefit of Higher Time Pay Scale. On 31.08.1995, the petitioner made a representation to the Excise and Taxation Commissioner, Haryana for counting of past service for granting benefit of pay fixation and increments. On 24.02.1998, the representation of the petitioner was decided and it had been observed that the benefit of service rendered by the petitioner in Kurukshetra University was payable only for the purpose of pension. On 04.01.2000, the Deputy Excise and Taxation Commissioner, Kurukshetra – respondent No.4 vide impugned order has withdrawn the benefit of adhoc service with regard to the grant of Higher Time Pay Scale which was granted by the respondent No.3.

3. Learned counsel for the petitioner argues that the service rendered by the petitioner in the Kurukshetra University as well as Treasury Office, Kurukshetra should be counted for the benefit of leave and increment and the pay of the petitioner should be fixed by counting the adhoc service rendered by the petitioner in the Kurukshetra University which was an

autonomous body. He further argues that the last pay of the petitioner drawn on the post while working in Kurukshetra University should have been protected as pay scale in both the posts was identical. He further argues that in view of instruction dated 22.08.1988, the benefit of service rendered in autonomous body could be given towards pension, meaning thereby, all consequential benefits for the purpose of increments, service and pension etc. He further argues that once the petitioner had come through proper channel his pay could not be fixed less than drawn previously and therefore he was entitled for protection of previous pay.

4. Learned State counsel essentially argues that the impugned recovery order was issued to the petitioner while he was still in service and therefore merely because this Court had granted stay vide order dated 27.07.2001 i.e. prior to admitting the case for hearing, and in the interregnum, since the petitioner has retired, he can not take any advantage of the fact that he is retired and therefore claims that recovery be not effected from him. It has been argued by learned counsel for the petitioner that since the petitioner has superannuated and all throughout the recovery was stayed by this Court and apart from the applicability of the Full Bench judgment of this Court in ***Budh Ram & Others vs. State of Haryana & Others*** (Civil Writ Petition No.2799 of 2008) reported as 2009(3) PLR 511, even otherwise in the interest of justice, equity warrants that no recovery be made at this stage.

5. I have perused the pleadings and gone through the record.

6. Without going into the merits of the amount sought to be recovered, it has to first noticed as to whether the petitioner can be blamed for his pay fixation wrongly owing to which he was paid certain excess

amount which is liable to be recovered. I am of the view that a mere fact that at the relevant time the petitioner was working as a Class-III employee, there is a legal presumption that he was not in a position to influence his superiors to pay him any excess amount. Further if the pay fixed was wrong it is entirely attributable to the superiors of the department and the petitioner cannot be made to suffer to pay for no fault of his. There is nothing on record and even otherwise to show that the petitioner has indulged in any concealment, fraud or any misrepresentation of any kind which led to wrong fixation of his pay. In this aspect, reference may be had to the Supreme Court judgment titled as ***State of Punjab and others vs. Rafiq Masih (White Washer) etc.***, (2015) 4 SCC 334, the relevant para thereof is reproduced herein below:-

“12. 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 may, 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.”

7. Perusal of the above clearly reflects that wrong fixation of pay of the petitioner is insignificant as long as there was no misrepresentation on the part of the petitioner. I see no reason why the principles enunciated in Rafiq Masih’s case *ibid* cannot be applied in the present case and benefit thereof be not given to the petitioner.

8. Petition is allowed to the extent that excess amount already paid to the petitioner cannot be recovered from him. Impugned recovery order is set aside.

(ARUN MONGA)
JUDGE

July 13, 2022
ashish

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