

Sr. No.349

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

CWP-4556-1997 (O&M)

Date of decision: 18.04.2022

Gita Ram

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

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

ARUN MONGA, J. (ORAL)

Petition herein is for issuance of a writ in the nature of mandamus directing the respondents not to withdraw the pay scale of Rs.480-760 of the petitioner on the post of Pump Operator and for staying the recovery of Rs.23,419/-.

Petition was admitted on 19.07.2001.

When called out for hearing, there is no representation on behalf of the petitioner. It seems that by sheer effluxion of time and pendency of the writ petition for more than 24 years before this Court, either it has been rendered infructuous or even otherwise the petitioner seems to have lost interest in pursuing the same.

I have perused the paper book.

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 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.”

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

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.

18.04.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No