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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: August 22, 2022

1. CWP-1565-2007 (O&M)

Suresh Kumar, Kanungo
.....Petitioner
versus
State of Haryana and others
.....Respondents

2. CWP-1922-2007 (O&M)

Shamsher Singh and others
.....Petitioners
versus
State of Haryana and others
.....Respondents

3. CWP-1921-2007 (O&M)

Ram Phal and another
.....Petitioners
versus
State of Haryana and others
.....Respondents

4. CWP-1997-2007 (O&M)

Mahabir Singh and others
.....Petitioners
versus
State of Haryana and others
.....Respondents

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present: Mr. Govind Chauhan, Advocate for the petitioner(s).

Mr. R.D. Shamra, DAG Haryana.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, bunch of above-mentioned four writ petitions is being disposed of, since not only the facts are similar but the law points and the issues raised therein are also common. For brevity, recitals are taken from CWP-1565-2007.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned order dated 11.12.2006 (Annexure P-8) passed by respondent No.2-Collector, Rohtak whereby pay of the petitioner is alleged to have been illegally re-fixed and recovery has been ordered from the petitioner.

3. Succinct factual background first. On 08.06.1986, petitioner was appointed as Revenue Patwari, in the Revenue Department, Haryana. Thereafter, he qualified the prescribed Departmental examination of Kanungos and was promoted as Kanungo on 02.04.1998 (Annexure P-1). Government of Haryana issued letter/ instructions dated 07.08.1992 (Annexure P-2) to the effect that all the employees who have completed 8 and 18 years of regular satisfactory service, shall be granted the first additional increment after 8 years and the second additional increment after 18 years. Further, instructions dated 08.02.1994 (Annexure P-3) were issued whereby Higher Standard Pay Scales is to be granted to Group 'C' and Group 'D' category of employees w.e.f. 01.01.1994 on their completion of 10 years and 20 years or more of regular satisfactory service. State further issued directions that Assured Career Progress Scales shall be applicable w.e.f. 01.01.1996. Petitioner was granted Ist A.C.P. Scale after completion of 10 years of service on 01.07.1996. Petitioner was issued show-cause notice dated 01.05.2006 (Annexure P-5) by respondent No.2 informing him that his

pay is going to be re-fixed and recovery is going to be made from him due to a mistake committed by the Department. Vide impugned order dated 11.12.2006 (Annexure P-8), respondent No.2 re-fixed the pay of the petitioner and ordered recovery from his salary.

4. Learned counsel for the petitioner(s) submits that impugned order has been passed illegally and arbitrarily. The excess amount, if any, was not paid on account of any misrepresentation or fraud on the part of the petitioners and the impugned order is not sustainable in law.

5. On the other hand, learned State counsel opposes the prayer of the petitioners.

6. I have heard learned counsel for the parties and gone through the case file.

7. 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. Furthermore, 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 on the basis of impugned order dated 11.12.2006 (Annexure P-8). 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."*

8. In the aforesaid premise, impugned recovery cannot be effected from petitioners, they being Class-III employee at the relevant time.

9. As a result of above discussion, the petition is allowed to the limited extent that the impugned recovery order dated 11.12.2006 (Annexure P-8) issued to the petitioners shall stand quashed.

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

(ARUN MONGA)
JUDGE

August 22, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No