

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

CWP-5178-2001 (O&M)

Date of decision: May 25, 2022

Jage Ram

.....Petitioner

versus

Pt. B.D. Sharma, Post Graduate of Medical Science,
Rohtak through its Director

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

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for quashing impugned order dated 20.03.2001 (Annexure P-5), whereby 1st and 2nd ACPs granted to the petitioner were withdrawn and recovery was ordered to be effected.

2. Petition was admitted for hearing on 03.08.2001.

3. When taken up for final adjudication, after around 20 years, there is no representation on behalf of the petitioner. In the premise, no useful purpose would be served to issue fresh notice to the petitioner as the same too would be an exercise in futile. Even the address of the petitioner is also perhaps not complete as is borne out from the memo of parties.

4. It seems that by sheer effluxion of time and pendency of the writ petition for more than 20 years before this Court, either it has been rendered

infructuous or even otherwise the petitioner seems to have lost interest in pursuing the same.

5. Sufficient facts first. Petitioner was appointed as Literate bearer on 25.01.1963 in the respondent institute. Due to scarcity of Laboratory Assistant Grade II, it was decided to give Laboratory Attendant/ Literate Bearers the refresher course of three months and be posted as Laboratory Assistant Grade II. Accordingly, vide letter dated 01.06.1974, petitioner was sent for the said course. After completion of refresher course, petitioner and others were given temporary appointment on the post of Laboratory Asstt. Grade II on *ad hoc* basis till the recommendees of Subordinate Services Selection Board (for short 'Board'), Haryana were recruited. Later, petitioner along with others was given appointment on the post of Laboratory Asstt. Grade II and were regularized by the respondent institute. Government of Haryana and consequently, respondent Institute revised the pay scale of its employees w.e.f. 1.1.1986 in accordance with the Revised Pay Rules, 1987 and petitioner was granted pay scale of Rs.1350-2200. A policy dated 08.02.1994 was issued to the effect that all the Group C and D employees are entitled for First Higher Standard Scale and Second Higher Standard Scale on completion of 10/20 years service respectively. Under the said instructions, petitioner was given the First Higher Standard Scale and 2nd Higher Standard Scale in the year 1994, having completed 20 years service on the post of Laboratory Technician. Again pay-scales were revised and pay of the petitioner was initially fixed in the pay scale of Rs.4500-7000 and he was given the benefit under the Haryana Civil Services (Assured Career Progression) Rule, 1998. Pay of the petitioner was fixed at the stage of

Rs.5900/- after giving the benefit of First ACP of Rs.5000-7850 w.e.f. 1.1.1996 corresponding to the First Higher Standard Pay Scale of Rs.1400-2600 and Rs.6200/- in the second ACP of Rs.5450-8000 w.e.f. 1.11.1997 corresponding to the 2nd ACP of Rs.1600-2660. Show cause notice dated 31.1.2001 (Annexure P-3) was issued purposing withdrawal of 1st and 2nd ACPs. Petitioner submitted reply to the show cause notice, but the respondent Institute vide impugned order dated 20.03.2001 (Annexure P-5) has withdrawn the 1st and 2nd ACPs without even considering the reply.

6. Perused.

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. However, as regards the impugned recovery vide impugned order dated 20.03.2001 (Annexure P-5), which was contemplated by the Department, but could not be effected due to the interim order dated 05.04.2001 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.”

8. In view of the aforesaid, concededly, there was no misrepresentation on the part of the petitioner qua the excess amount paid to him which is sought to be recovered vide impugned order. Impugned recovery cannot be effected from petitioner, he being class-III employees at the relevant time.

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

10. Disposed of.

(ARUN MONGA)
JUDGE

May 25, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No