

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

CWP NO. 15098 OF 2008(O&M)

DATE OF DECISION: 06.04.2022

Bal Kishan and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CWP No. 14350 of 2008

Kamlesh Kumari and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : None for the petitioners.

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

ARUN MONGA, J. (ORAL)

Vide this common order, I intend to dispose of above mentioned two petitions as common questions of fact and law are involved therein. For brevity, the facts are being taken from CWP No. 15098 of 2008.

2. Petitioners have approached this Court for issuance of a writ in the nature of certiorari seeking quashing of impugned order dated 14.07.2006 (Annexure P-4), vide which benefit of higher pay scale granted to them was ordered to be withdrawn.

3. Succinct facts first. Petitioner No.1 was working as JBT teacher. He had earlier approached this Court by way of CWP No.12023-1993 seeking higher pay scale as per his higher qualification. Vide order dated 06.02.1997, his writ petition was allowed. In compliance of the above decision passed by this Court,

the respondent authorities accorded sanction for grant of higher pay scale and pay of the petitioners was fixed in higher grade. It is alleged that State Government did not file any appeal and the decision passed by this Court has since attained finality. Thereafter, vide impugned order dated 14.07.2006, respondent No.2 on the basis of some opinion of the L.R. Haryana directed the District Elementary Education Officer, Faridabad to initiate steps to recover the benefit of higher pay scale.

4. Perused.

5. 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.”

6. In the aforesaid premise, impugned recoveries cannot be effected from petitioners, they being class-III employees at the relevant time.

7. Accordingly, the impugned recovery orders (Annexure P-4) to the extent the same is sought to be effected retrospectively are quashed.

8. Photocopy of the order be placed on the files of the connected cases.

9. Disposed of in above terms.

APRIL 06, 2022
vandana

(ARUN MONGA)
JUDGE

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