

302 (7th case)

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

**CWP NO. 17340 OF 2008(O&M)
DATE OF DECISION: 06.04.2022**

Sudhir Kumar and another

...Petitioners

Versus

State of Haryana and another

...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)

Petition herein inter alia is for issuance of a writ in the nature of certiorari seeking quashing of impugned order dated 20.09.2007 (Annexure P-1), vide which second ACP granted to the petitioners have been ordered to be withdrawn.

2. Succinct facts first. Petitioners were working as tracers with the respondent department. They were granted second ACP scales by the competent authority on completion of 20 years of service. Vide impugned letter dated 20.09.2007 (Annexure P-1), respondent No.2 directed all the Circle Superintending Engineers in the Irrigation Department to withdraw the second Assured Career Progression (ACP) Scale granted to the tracers (petitioners) on the ground that they have not passed the departmental examination required for promotion to the post of Draftsman. Show cause notices were also issued to the petitioners and reply to the same was given. Recovery from the salaries of the petitioners has also been ordered.

3. It is pleaded in the petition that withdrawal of second ACP is arbitrary as the respondent department has already granted exemption/relaxation from passing the departmental examination in case of 93 clerks, who have been promoted as Sub Divisional Clerks. Even the large number of junior Engineers, who are required to pass departmental examination for promotion to the post of Sub Divisional Officer are given benefit of second ACP without requiring them to pass the departmental examination.

4. I have perused the paper book.

5. I am of the opinion that the recovery sought to be made would be iniquitable, harsh and arbitrary and would far out weigh 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. Impugned recoveries cannot thus be effected from petitioners, they being Class-III employees at the relevant time.

7. In the aforesaid premise, the impugned recovery orders (Annexure P-1) to the extent the same is sought to be effected retrospectively is quashed and writ petition is disposed of accordingly.

APRIL 06, 2022

vandana

Whether speaking/reasoned :

Whether reportable :

(ARUN MONGA)

JUDGE

Yes/No

Yes/No