

302 (8th case)

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

CWP NO. 17807 OF 2008(O&M)

DATE OF DECISION: 06.04.2022

Harmaya Singh

...Petitioner

Versus

Director of Secondary Education 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 seeks issuance of a writ in the nature of certiorari to quash the order dated 04.02.2008 (Annexure P-1) vide which pay of the petitioner was reduced to Rs.6500/- from 6900/- with effect from 01.01.1996 and recovery was ordered to be effected from him.

2. Succinct facts first. Petitioner was appointed as Science Master on *ad hoc* basis and later on his services were regularized w.e.f. 16.09.1982. State of Haryana on revision of pay scale w.e.f. 01.01.1986 fixed his pay in scale of Rs.1400-2600/-. State of Haryana introduced the higher standard of pay scale w.e.f. 01.01.1994 on completion of 10/20 years of regular service in substitution of earlier grant of selection grade and accordingly his pay was fixed at Rs.2120/- before 31.12.1995. Thereafter, State of Haryana revised the pay scale of its employees in terms of Haryana Civil Service (revised pay) Rules, 1998 and ACP Rules 1998. Respondents fixed the pay of the petitioner at Rs.6900/- w.e.f. 01.01.1996. On 04.02.2008, on the basis of Govt. letter dated 22.08.2003 without issuing any show-cause-notice respondents reduced/re-fixed the

pay of the petitioner at Rs.6500/- w.e.f. 01.01.1996 and also ordered for effecting recovery.

3. Perused.

4. 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.”

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

6. 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.

APRIL 06, 2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No