

302 9th case

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

CWP No. 19196 of 2008(O&M)

DATE OF DECISION: 06.04.2022

Narain Dass Jhamb and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Jagdish Manchanda, Advocate,
for the petitioners.

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

ARUN MONGA, J. (ORAL)

Under challenge herein is impugned order dated 22.08.2003 (Annexure P-2) vide which pay of the petitioners was directed to be re-fixed and pursuant thereto necessary exercise was carried out and as a consequence thereof, recovery orders were passed qua the petitioners contained at Annexures P-3 to P-14, which are impugned herein.

2. Succinct facts first. Petitioners were working in the office of respondent No.3 and their pay scale was revised under Haryana Civil Services (Revised Pay) Rules, 1998. The pay of the petitioners was fixed w.e.f. 01.01.1996. Thereafter, vide Instructions dated 19.07.2005 State of Haryana granted higher standard pay scale to Class III and Class IV employees after their 10 and 20 years of regular satisfactory service in order to remove stagnation in their service career. Thereafter, respondent vide impugned order/letter dated 22.08.2003 (Annexure P-2) decided to withdraw the benefit of increments granted to them. This benefit of increment was sought to be withdrawn retrospectively. Respondents also issued recovery notices dated 10.07.2008 and 22.07.2008 for

depositing the excess amount, which was given to them erroneously.

3. Heard.

4. The very nature of the impugned orders clearly conveys that there was no misrepresentation on behalf of the petitioners as has been argued and also pleaded in the petition. The relevant part of impugned order dated 10.07.2008 (Annexure P-3) is reproduced herein below:

“Subject: Regarding recovery of fixing wrong pay scale.

In reference to above said subject as per Govt. Letter Sr. No.6/149/2002-4 PR (FD) dated 22.08.2003, your pay scale was wrongly fixed from dated 01.01.1996. According to which the recovery of the amount Rs. 1656/- has to be made and deposit this amount in the account of Municipal Council so that information of this may send to Ld. Deputy Commissioner.”

5. Perusal of the above, it is clear that there is a candid admission on the part of the department that higher pay was given erroneously on their part and not on the basis of any misrepresentation on the part of the petitioners.

6. 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 already 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.”

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

8. Accordingly, the impugned recovery orders to the extent the same is sought to be effected retrospectively are quashed and writ petition is disposed of accordingly.

APRIL 06, 2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No