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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP- 12429-2012 (O&M)

Date of decision: April 25, 2022

Gurcharan Singh and others

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioners.

Ms. Akshita Chauhan, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Petitioners have approached this Court for issuance of a writ in the nature of mandamus directing the respondents to withdraw the entry made in the service book vide letter dated 12.08.2010 (Annexure P-10) vide which the benefit of three increments, which was granted to the petitioners with effect from the date of passing of their qualification of Giani/Prabhakar, has been decided to be withdrawn.

2. Succinct facts first. The petitioners were initially appointed as Junior Basic Training (JBT) Teachers in the Punjab Education Department on *ad hoc* basis and thereafter their services were regularized. In addition to the qualification prescribed for the post petitioner No.1 was in possession and petitioners No.2 and 3 acquired the qualification of Giani/Prabhakar during the service. Later on, they were promoted to the post of Head Teacher and Centre Head Teacher. Petitioners later retired on attaining the age of superannuation as JBT Teachers. On acquiring higher qualification, they were granted increments in terms of policy decision dated 23.07.1957 issued by

State of Punjab which *inter alia* provides for grant of additional increments on the basis of higher qualification. After the retirement of the petitioners, their case was sent by the Department to the office of the Accountant General, Punjab for revision of pension and other pensionary benefits. Respondent No.3 vide letter dated 12.08.2010 raised the objection that petitioners have wrongly been given the benefit of three increments and directed the department that pay of the petitioners be re-fixed to Rs. 170/- instead of Rs. 191/- with effect from 01.04.1977 and Rs. 570 instead of Rs. 620/- with effect from 01.01.1978. In view of the letter dated 12.08.2010, their pension and pensionary benefits have been calculated on the basis of re-fixation at the lower stage. Hence the petition.

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 petitioners, they being class-III employees at the relevant time.

6. Accordingly, the impugned recovery orders to the extent the same is sought to be effected retrospectively are quashed.

7. Disposed of in above terms.

(ARUN MONGA)
JUDGE

April 25, 2022

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No