

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP-18014-2015

Date of Decision: July 21, 2022

Asha Rani

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jitender Nara, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

The challenge in the present petition is to the recovery order dated 01.05.2015 (Annexure P-4) as well as to the show cause notice dated 23.05.2015 (Annexure P-5). Vide recovery order dated 01.05.2015 (Annexure P-4), the respondents have proposed recovery of Rs. 1,53,052/-, from the petitioner on the ground that the petitioner was given the benefit of step-up of pay equivalent to her junior, which benefit was found to be inadmissible to the petitioner, hence, the pay of the petitioner was re-fixed by the respondents and it was found that the petitioner has been paid a sum of Rs. 1,53,052/- beyond her entitlement.

Learned counsel for the petitioner has argued that in the present case the show cause notice was issued on 23.05.2015, copy of which has

been appended as Annexure P-5, whereas the recovery from the petitioner was ordered even prior to the issuance of the show cause notice, which shows that the respondents were bent upon to recover the amount and the show cause notice was only a formality.

After notice of motion, the respondents have filed the reply wherein they have submitted that the petitioner was given the benefit of step-up of pay equivalent to her junior Shri Mahavir Sharma, Sanskrit Teacher. Learned State counsel submits that the said benefit was extended without considering the actual facts and the petitioner continued to get the benefit, which she was otherwise not entitled for, starting from December, 2010 onwards. When the mistake came to the knowledge of the respondents, the pay of the petitioner was revised and it was found that the petitioner has been paid in excess an amount of Rs.1,53,052/-, which is to be recovered as the petitioner was not entitled for the said amount

I have heard learned counsel for the parties and gone through the record with their able assistance.

The question whether recovery can be made from an employee or not, stands settled by Hon'ble Supreme Court of India in the case of **State of Punjab and others v. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**. As per the said judgment, no recovery can be done from a Class-III and Class-IV employee (now described as Group-C and Group-D employees). It is a conceded position that the petitioner was working on the post of Sanskrit Teacher, which is a Group-C post. That being so, keeping in view the judgment of Hon'ble Supreme Court in **Rafiq Masih (supra)**, the

recovery cannot be made from the petitioner. The relevant paragraph 12 of the said judgment is as under:-

“12. 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 may, 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.”*

Further, Hon'ble the Supreme Court of India in case titled as **Thomas Daniel v. State of Kerala and others**, (Civil Appeal No. 7115 of 2010, decided on 02.05.2022), has held that where there is no misrepresentation by an employee to claim any benefit, though the benefit might be inadmissible but the excess amount paid cannot be recovered. The

relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

Learned State counsel has not been able to controvert the fact that keeping in view the settled principle of law, which has been noticed hereinbefore, no recovery of the excess payment can be made by the respondents from the petitioner. Hence, the impugned recovery order dated 01.05.2015 (Annexure P-4) and the show cause notice dated 23.05.2015 (Annexure P-5) with regard to recovery of the amount from the petitioner after re-fixation of her salary, are contrary to the settled principle of law and the same are accordingly set aside.

As the recovery from the petitioner was already stayed by this

Court while issuing notice of motion, no further orders are required to be passed.

Present writ petition is allowed in the above terms.

No order as to costs.

(HARSIMRAN SINGH SETHI)
JUDGE

July 21, 2022
Pkapoor

Whether Speaking/Reasoned: **YES/~~NO~~**
Whether Reportable: **YES/~~NO~~**