

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

CWP NO. 21972 OF 2013

DATE OF DECISION: 04.04.2022

Mohinder Pal and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CWP No. 27951 of 2013

Subhash Gupta

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP No. 23189 of 2014

Veena Garg

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. V.A. Garg, Advocate for
Mr. Surya Prakash, Advocate;
Mr. R. N. Sharma, Advocate;
Mr. I. S. Pabla, Advocate,
for the petitioner (s).

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Vide this common order, I intend to dispose of above mentioned three petitions as common issues and facts are involved therein.

2. Petitioners are before this Court for issuance of a writ in the nature of certiorari seeking quashing of impugned order dated 11.09.2013 (Annexure P-9), vide which punishment of withdrawal of stepping up of benefits has been awarded to them.

3. Succinct facts first from CWP No. 21972 of 2013. Petitioners joined service on various dates between years 1975 to 1979. Petitioners No.1 to 9 were appointed on clerical posts, whereas petitioner No.10 was appointed as Steno-typist. Their services were regularized between 1977 to 1980. Petitioners claim that they were given only one promotion during their complete career whereas their juniors were accorded better treatment. All the petitioners except petitioner No.3 have retired from service. On 04.09.2012, respondent No.2 issued Show Cause Notice to the petitioners seeking withdrawal of benefit of step up/at par salary. One junior to the petitioners, namely Jaibir Singh was still given the same benefit in view of Court's order dated 06.12.2004. Petitioners submitted their reply to the show cause notice followed by personal hearing but to no avail. Hence, the petition.

3. Learned counsel for the petitioner *inter alia* contends that case of the petitioner is squarely covered by judgment rendered in **State of Punjab and others versus Rafiq Masih AIR 2015(SC) 696** and the punishment of withdrawal of benefit of step up vide impugned order dated 11.09.2013 (Annexure P-9) is liable to be quashed on that ground alone.

4. I have heard learned counsels for the parties.
5. The very nature of the impugned order dated 11.09.2013 (Annexure P-9) clearly conveys that there was no misrepresentation on behalf of the petitioners. There is candid admission on part of the department that step up benefits were given erroneously and not on the basis of any misrepresentation on the part of the petitioners.
6. In the premise, I am of the opinion that the recovery sought to be made would be iniquitous, harsh and arbitrary. It would far outweigh the equitable balance of the employer's right to recover vis-à-vis the employee's right of not to be put to jeopardy, **for** he did not commit any delinquency and/or misrepresentation. In view of the law laid down in **Rafiq Masih's case (supra)**, no recovery can be effected in such a case, provided, of course that the employee belongs to either Class III or IV service. 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.”

7. As an upshot, since admittedly, there is no misrepresentation, concealment or fraud on the part of petition, impugned recoveries cannot be effected in view of the law laid down in **Rafiq Masih’s case** (supra), petitioners being Class-III employees.

8. In the aforesaid premise, the impugned recovery orders to the extent the same is sought to be implemented retrospectively is quashed. Respondents are at liberty to remove the anomaly and carry out the pay correction for future only.

9. Disposed of.

APRIL 04, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No