

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

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CWP-18779-2015 (O&M)

Date of decision : 30.11.2022

Puran Chand

... Petitioner

Versus

Haryana Urban Development Authority, Panchkula and others

.. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Yesh Paal Malik, Advocate for the petitioner.

Mr. R.S. Longia, Advocate for the respondents.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the impugned order dated 13.07.2015 (Annexure P-7), office memo dated 29.07.2015 (Annexure P-8) and the last pay certificate (LPC) dated 13.08.2015 (Annexure P-11) whereby the pay of the petitioner has been re-fixed/reduced and recovery for the excess amount paid to him has been ordered.

Learned counsel for the petitioner submits that the pay of the petitioner, who was working as an Assistant, was stepped up with effect from 01.01.2006 and he was continued to draw salary on the stepped up pay till the passing of the impugned order without any misrepresentation on his part. The impugned orders were passed without issuance of any notice or opportunity of hearing. The petitioner has retired on 31.12.2018. He also submits that even after stepping up of the petitioner, his pay was at par with his juniors and he had not drawn any excess amount which was not payable to similarly situated employees. The respondents had also not withdrawn the order of stepping up of the pay of the petitioner.

Learned counsel for the respondents, however, submits that the respondents are not disputing the stepping up of the pay which had rightly been granted to the petitioner but the benefit of 2nd and 3rd ACP scales which had been granted to him w.e.f. 01.01.2001 and 01.01.2011 had to be readjusted as he had not been promoted at that time but later, he has been granted retrospective promotion. Thus, the impugned orders effecting recovery from the petitioner were rightly passed.

Heard.

The petitioner is stated to have joined as a Clerk in the year 1981. He had been promoted as Assistant and is stated to have retired on 31.12.2018 as Deputy Superintendent. The petitioner had earlier been granted 2nd ACP scale in the year 2001 and 3rd ACP scale on 01.01.2011 but later the respondents, after granting him retrospective promotion, have re-fixed his pay and passed the impugned orders directing recovery. The petitioner was working as a Class-III employee when he had been granted the ACP scales and even at the time of the passing of the impugned order, he was stated to be on a Class-III post.

This Court by order dated 07.09.2015, while issuing notice to the respondents, had directed that the recovery pursuant to the impugned order shall remain stayed. The petitioner has now retired and at this stage, it would be inequitable to allow the recovery of about Rs.2,61,612/- in terms of the impugned order.

It has been held by the Supreme Court in the case of ***State of Punjab and others versus Rafiq Masih (White Washer) etc., 2015(4) SCC 334*** that the recovery, in case of Class-III officials and those who have retired from

service, would be inequitable. There was no misrepresentation on the part of the petitioner when he had been granted ACP scales.

Consequently, the petition is allowed and the impugned orders dated 13.07.2015 and 29.07.2015 (Annexure P-7 and P-8 respectively) and the last pay certificate dated 13.08.2015 (Annexure P-11), effecting recovery for the excess payment of salary, are set aside.

(ANUPINDER SINGH GREWAL)
JUDGE

November 30, 2022

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No