

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

CWP NO. 1935 of 2016 (O&M)

DATE OF DECISION: 18.05.2022

Onkar Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.S. Sangwan, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of certiorari to quash order dated 24.12.2015 (Annexure P-1) vide which pay of the petitioner was reduced.

2. Succinct facts first. Petitioner joined as 'Telephone Operator' on work charge basis on 01.02.1982. His services were regularized w.e.f. 01.01.1987. First ACP and second ACP were also granted on completion of regular satisfactory service of ten years and twenty years respectively. He was held entitled for third ACP w.e.f. 01.04.2014 on completion of 24 years of service. His case for third ACP was forwarded to respondent No.3 for approval. While granting third ACP, technical pay scale of Rs.1200-2040, which was granted in the year 2011, has been withdrawn and recovery of the excess payment on account of granting technical pay scale has also been ordered without issuing any show cause notice.

3. Learned counsel for the petitioner submits that impugned order has been passed without giving an opportunity of hearing to the

petitioner. The excess amount, if any, was not paid on account of any misrepresentation or fraud of the petitioner. Moreover, petitioner had retired on 31.08.2018 after attaining the age of superannuation. i.e. 58 years being a Class III employee.

4. Learned State counsel strongly controverts the contention of learned counsel for the petitioner that, show-cause-notice was not issued to the petitioner. He submits that show cause notice was indeed issued to the petitioner and no reply to the same has been filed, as is clearly borne out from para 6 of the reply filed by the State.

5. I have heard learned counsel for the parties and gone through the case file.

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 herein below:

“ *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. In the aforesaid premise, impugned recovery cannot be effected from petitioner, he being Class-III employee at the relevant time.

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

18.05.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No