

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: September 15, 2022

1. CWP-17456-2017 (O&M)

Mange Ram and another

.....Petitioners

versus

State of Haryana and others

.....Respondents

2. CWP-18649-2017 (O&M)

Chander Bhan and others

.....Petitioners

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Balraj Singh Rathee, Advocate for the petitioner(s).

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, bunch of above-mentioned two writ petitions is being disposed of, since not only the facts are similar but the law points and the issues raised therein are also common. For brevity, recitals are taken from CWP-17456-2017.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned order dated 17.07.2017 (Annexure P-8), impugned show-cause notices dated 30.03.2017 (Annexure P-4) & 10.07.2017 (Annexure P-5) whereby it was ordered to withdraw the ACP

Scales granted to the petitioners w.e.f. 01.01.1996 onwards since there is no misrepresentation or fraud attributed to the petitioners.

3. Succinct factual background first. Petitioners joined the respondent-Department as Junior Engineer(s). State Government issued ACP Rules 1998 and 2008, and petitioners were granted the ACP benefits, accordingly. Respondent-Department granted 1st, 2nd and 3rd ACPs to petitioner No.1 w.e.f. 01.01.1996, 01.12.2001 & 01.09.2014 respectively and 1st and 2nd ACPs to petitioner No.2 w.e.f. 01.01.1996 & 01.12.2002 respectively. Vide impugned orders dated 30.03.2017 (Annexure P-4) & 10.07.2017 (Annexure P-5), petitioners were issued show-cause notices for withdrawal of ACP benefits granted to them and re-fixation of their pay. Petitioners submitted their replies to the aforesaid show-cause notices. Impugned notice dated 17.07.2017 (Annexure P-8) was issued by the respondent-authorities re-fixing the petitioner's pay and for recovery of excess amount ignoring the Rules and the law settled by the Supreme Court in **State of Punjab and others** versus **Rafiq Masih**, reported as **AIR 2015 (SC) 696**.

4. Learned counsel for the petitioner(s) submits that impugned orders have been passed illegally and arbitrarily. The excess amount, if any, was not paid on account of any misrepresentation or fraud on the part of the petitioners. He further submits that per his specific instructions from his clients, none of them were promoted and continued to serve on Class-III posts. Moreover, petitioners have since retired upon attaining the age of superannuation being Class III employees and the impugned orders are not

sustainable in law. He relies on **Rafiq Masih's case (supra)** to support his contentions.

5. On the other hand, learned State counsel opposes the prayer of the petitioners. Learned State counsel submits that per his information, petitioners were serving as Class-II officers as they were later promoted from Class-III to Class-II posts. However there is no such stand shown to have been taken in the written statement of the respondents.

6. I have heard rival contentions of learned counsel for the parties and gone through the case file.

7. 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**, reported as **AIR 2015 (SC) 696**, no recovery can be effected on the basis of impugned order. 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.

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(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."

8. In the aforesaid premise, impugned recovery cannot be effected from petitioners, they being Class-III employees at the relevant time.

9. As a result of above discussion, the petition is allowed to the limited extent that the impugned recovery notice dated 17.07.2017 (Annexure P-8) in CWP-17456-2017 and notice dated 11.08.2017 (Annexure P-15) in CWP-18649-2017 issued to the petitioners shall stand quashed.

10. Pending application(s), if any, shall also stand disposed of.

11. Photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

September 15, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No