

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

CWP-22982-2016 (O&M)
Date of decision: 20.12.2022

Santosh Gandhi

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Pankaj Bali, Advocate for
Mr. Deepak Sharma, 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 for quashing impugned letter dated 04.01.2016 (Annexure P-6) and order dated 05.02.2016 (Annexure P-12 colly.) vide which recovery of Rs.1,43,210/- from pension and Rs.20,790/- from gratuity was ordered to be made from the pension and gratuity respectively of the petitioner. Further, a writ has been sought seeking direction to the respondents not to effect recoveries from the petitioner in view of the instructions dated 23.02.2016 (Annexure P-10).

2. First, succinct factual background, as pleaded in the petition. Petitioner joined her duties on 16.09.1975 as Clerk in Transport Department Haryana on temporary basis. Her services were regularized w.e.f. 01.01.1980. She was granted benefit of 2nd higher standard scale w.e.f. 01.10.1995 on completion of 20 years of continuous satisfactory service. When petitioner

CWP-22982-2016 (O&M)

was about to retire with effect from 31.01.2013, show cause notice dated 28.06.2012 was issued to her. Petitioner replied to the same but to no avail. Respondent No.3 passed order dated 5/11.09.2012 (Annexure P-3) i.e. just around five months prior to the date of retirement of the petitioner whereby benefit of 2nd higher standard scale was withdrawn and pay of the petitioner was reduced. Aggrieved against the order, petitioner filed CWP-21626-2012 whereby claim of the petitioner was rejected vide order dated 21.04.2014 (Annexure P-4). During pendency of the said petition, petitioner had retired from service on 31.01.2013 but certain dues/retiral benefits including physical handicap allowance/conveyance allowance were withheld by the respondents. After the retirement of the petitioner, impugned letter dated 04.01.2016 (Annexure P-6) and dated 05.02.2016 (Annexure P-12) were issued whereby sums of Rs.1,43,210/- and Rs.20,790/- respectively were ordered to be recovered from the pension of the petitioner. Hence, the instant petition.

3. I have heard learned State counsel and gone through the case file.
4. 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 from the petitioner on the basis of the impugned orders, she being a Class-III employee. 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."*

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

6. Learned counsel for the petitioner relies on a judgment passed by a Coordinate Bench of this Court presided over by my learned brother, Harsimran Singh Sethi, J., in somewhat similar circumstances, wherein it was held as below:

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

As the counsel for the petitioners only restricts their claim for the recovery, the same is being decided by the present order.

It is an admitted position that the respondent-State of Haryana had issued instructions on 22.08.1996 by which while granting the benefit of additional increment, the period of adhoc service was to be counted and it cannot be disputed that keeping in view the said instructions, petitioners in these writ petitions became entitled for the benefit of additional increment after rendering 8 years of service by counting his adhoc service, which benefit was extended to the petitioner by the respondents.

After the instructions dated 15.03.2002, when the Government of Haryana decided that the benefit of adhoc service cannot be given while granting the benefit of additional

increment after rendering 8/18 years of service, the respondents should have withdrawn the benefit there and then. It is the respondents, who continued to give the benefit of additional increment to the petitioner upto the date of impugned orders. Once it was the respondents, who failed to implement their order upon the petitioner till the date of passing impugned order of refixing the salary of the respective petitioners, they cannot be allowed to recover the benefit, which was extended to the petitioners by them only and that too under the instructions of 1996, which hadmade the petitioner eligible for the grant of said benefit at the given time.

In a recent judgment given by the Hon'ble Supreme Court of India, guidelines have been framed with regard to the recovery, which is to be done from the employees. In the judgment given by the Hon'ble Supreme Court of India in State of Punjab and others Vs. Rafiq Masih etc. 2015 (4) SCC 334, guidelines have been framed as to under what circumstances, recovery cannot be done from the employees. The relevant paragraph of the said judgment is as under:

“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 employees, 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.”*

A bare perusal of the said judgment would show that employees, who have either retired or nearing their retirement, no recovery can be effected from them. Further, as per clause III

of the relevant paragraph, no recovery can be ordered in respect of withdrawal of order which is more than 5 years old. In the present case, impugned order was passed on 18.05.2007 and the petitioner in CWP No.10014 of 2011 was nearing his retirement as petitioner retired on 30.06.2008 and further, the recovery was being done after withdrawing the benefit, which was extended to the petitioner in the year 1990 and the order of recovery was being passed in the year 2007 therefore, the case of the petitioner in respect of the recovery is covered by the above said judgment and the same cannot be effected from the petitioner.

In respect of CWP No.22613 of 2015, learned counsel for the respondents admits that in this case also, the re-fixation and the recovery are being ordered in pursuance to the instructions dated 15.03.2002 as in the case of the petitioner in CWP No.10014 of 2011. A bare perusal of the impugned order would show that order of re-fixation of his salary was passed in the year 2014 and that too on the basis of the instructions dated 15.03.2002 i.e. after a period of approximately 12 years and further recovery was effected from the retiral benefits, which is clear from the impugned order Annexures P-7 to P-9.

In view of the above, the writ petitions are allowed qua the recovery to be made from the petitioner in pursuance to the impugned order dated 18.05.2007 (Annexure P-6) in CWP No.10014 of 2011 and in pursuance to the impugned orders Annexures P-7 to P-9 in CWP No.22613 of 2015 are set aside. The recovery, if any, made from the petitioners, is declared to be illegal and against the well settled principle of law. The respondents are directed that in case any recovery has been effected from the petitioners in pursuance to impugned orders already set aside, the same be refunded to the petitioner within two months from the receipt of copy of this order.

The writ petitions are allowed in above terms.”

7. No concealment or misrepresentation is attributed to the petitioner for overpayment of the amount sought to be recovered from her. I see no reason as to why the petitioner be not accorded the benefit on parity.

8. As a result of above discussion, the petition is allowed to the limited extent that the impugned recovery orders dated 04.01.2016 (Annexure P-6) and 05.02.2016 (Annexure P-12) issued to the petitioner shall stand quashed. This order shall not operate as a precedent and the same is being

passed in the peculiar facts and circumstances of the present case. Recovery, if any, made pursuant thereto shall be credited to the pension account of the petitioner.

9. It is also made clear that quashing of the recovery order shall not prevent the respondents to carry out the necessary correction for future payments.

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

(ARUN MONGA)
JUDGE

December 20, 2022
vandana

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