

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.212

CWP No.3909 of 2015

Date of Decision: 12.09.2022

D.D.Tayal

.... Petitioner

Versus

Haryana Vidyut Prasaran Nigam Ltd.
and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.L.Sharma, Advocate
for the petitioner.

Mr. Puneet Jindal, Sr. Advocate with
Mr. Kamal Mittal, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the grievance of the petitioner is qua the withdrawal of the increment which was granted to the petitioner on the ground that the same has been extended to another colleague of the petitioner namely, Baru Ram. The challenge is to the order dated 17.12.2014 (Annexure P-10), by which recovery has been done from the petitioner. The challenge is also to the letter dated 09.12.2014 (Annexure P-9), by which the revised pension payment order was issued in respect of the petitioner.

Learned counsel for the petitioner submits that though the revised pension payment order has been challenged in the present petition but the petitioner is not pressing the said prayer and the challenge is only limited to the recovery of the excess amount, which is being done from the petitioner.

As per the averments made in the petition, upon regaining seniority, the petitioner raised a grievance with regard to the step up of his pay equivalent to Baru Ram, who was junior to the petitioner but was promoted in preference to the petitioner, being a reserved category candidate. Keeping in view the said claim raised, the respondents considered and allowed the benefit of equal pay to the petitioner with that of Baru Ram on the basis of which benefits ultimately the retiral benefits were also calculated including the pension. Thereafter, the respondents realized that Baru Ram was granted one increment inadvertently, for which he was not entitled and the same was withdrawn from him and his pay was reduced and consequently, the petitioner was also issued notice to the effect that once the pay of Baru Ram has been decreased, the same has to be reflected in the pay of petitioner as well. The petitioner's pay was also reduced equivalent to Baru Ram and the respondents intend to make the recovery of the excess amount paid to the petitioner. In the present petition, only the grievance is against recovery of the excess amount, which is being pressed.

Upon notice of motion, reply has been filed wherein the respondents have stated that initially the claim of the petitioner for stepping up of his pay equivalent to his junior Baru Ram was accepted and later on, it was found that Baru Ram was extended one increment inadvertently, which increment was withdrawn from the said Baru Ram, hence, the same needs to be withdrawn from the petitioner also and the action was taken accordingly.

Learned Senior counsel appearing on behalf of the respondents submits that upon withdrawal of the said increment, the pension of the petitioner was refixed and hence, the excess amount paid to the petitioner already, being public money, needs to be recovered.

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

The question which arises is whether keeping in view the fact that the pay of Baru Ram was reduced, the consequent reduction of the pay of petitioner will also entitle the respondents to make recovery of the excess amount paid.

Nothing has come on record to show that at any given stage, the petitioner misrepresented his case so as to gain the benefit which has been withdrawn from him, which is resulting into the recovery of the excess amount. Rather the petitioner only claimed the benefit of equal pay with his junior Baru Ram, which was extended to him and now, the recovery from the petitioner is being done on the ground that the junior of the petitioner Baru Ram was extended one increment inadvertently, which was withdrawn from him so as to reduce his salary, which will also reflect upon the petitioner's salary. This fact makes it clear that the petitioner has no role to play in fixing the salary of Baru Ram or otherwise, hence, question of misrepresentation on the part of petitioner does not arise.

The question further arises that when there is no misrepresentation on the part of the petitioner, whether the recovery of the excess amount can be made or not. The said question came up for consideration before Hon'ble Supreme Court of India and the Hon'ble Apex Court while rendering judgment in **Civil Appeal No.7115 of 2010** titled as **Thomas Daniel versus State of Keral and others**, decided on 02.05.2022, held that where there is no misrepresentation or fraud played by an employee concerned, the excess amount can not be recovered. The relevant paragraph 14 of the said judgment is as follows:-

“Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.”

Keeping in view the above, the claim of the petitioner with regard to recovery of the excess amount is covered by the judgment of Hon'ble Supreme Court of India in **Thomas Daniel's case (supra)**. The recovery of the excess amount is not permissible from the petitioner and the respondents are restrained from doing so. Any recovery of the excess amount, if any, already done from the petitioner, be refunded back to the petitioner within a period of two months from the receipt of copy of this order.

Petition stands allowed.

(HARSIMRAN SINGH SETHI)
JUDGE

12.09.2022
Maninder

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