

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

Date of decision: August 08, 2022

1. CWP-5887-2015 (O&M)

Ram Bhagat

.....Petitioner

versus

State of Haryana and others

.....Respondents

2. CWP-19859-2018 (O&M)

Ram Chander

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sandeep Singal, Advocate
Mr. R.S. Sangwan, Advocate for the petitioner(s).

Mr. Saurabh Mohunta, DAG Haryana.

Mr. Rajesh K. Sheoran, Advocate for respondents No.2 to 4.

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-5887-2015.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned order/ letter dated 21.11.2014 (Annexure P-3) whereby respondent-Department decided to withdraw the benefit of Ist Higher Standard Pay Scale granted to the petitioner w.e.f. 01.01.1994 by re-fixing his

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pay retrospectively w.e.f. 01.01.1994 onwards and effecting recovery of amount under the garb of over payment being highly illegal, arbitrary and without issuing any show-cause notice or giving any opportunity of hearing.

3. Succinct factual background first. Petitioner was appointed as T-Mate (Technical Mate) on 15.10.1977 on temporary basis. His services were regularized w.e.f. 28.11.1983 on the post of T-Mate and he was further promoted as Pump Operator w.e.f. 08.02.2010. He retired from the service as Pump Operator on 30.04.2013. Pursuant to letter dated 08.02.1994 (Annexure P-1) issued by Finance Department of respondent-State of Haryana, petitioner was granted first Higher Standard Pay scale of Rs.1400-2600/- w.e.f. 01.01.1994 and his pay was accordingly re-fixed. Vide notification dated 23.08.1990, State decided that the employees who were working on technical posts in various Departments for which minimum qualification prescribed is matric with ITI certificate/ Polytechnic will be granted the modified pay-scale of Rs.1200-2040 w.e.f. 01.05.1990 provided that they were getting pay in the pay-scale of Rs.750-940, 775-1025, 800-1150, 950-1400, 950-1500 as on 01.01.1986. Therefore, employees possessing the qualification of matric and ITI were granted the benefit of above pay revision w.e.f. 01.05.1990 or w.e.f. the date of joining/ regularization against such posts. Since aforesaid technical pay-scale was not granted equally to all the employees, therefore, some of the employees approached this Court for grant of technical pay-scale of Rs.1200-2040 w.e.f. 01.05.1990 and the same was allowed vide order dated 18.01.2010. In compliance thereof, vide letter/ notification dated 09.08.2010 (Annexure P-2), a general decision was taken that the employees who were appointed prior to 01.05.1990 on technical post for which educational qualification is matric with

ITI under the provisions of Service Rules will be granted the benefit of the same notionally w.e.f. 01.05.1990 and actually from 09.08.2010 (date of notification). Respondent-Department re-fixed the pay of the petitioner accordingly. Vide impugned order/ letter dated 21.11.2014 (Annexure P-3), the respondent-Department ordered to re-fix the petitioner's pay w.e.f. 01.01.1994 onwards and ordered recovery of overpayment on the ground that as per instructions of the Government, pay-scales of category modified after 01.01.1986 are not entitled for the benefit of Higher Standard Scales and they are entitled for placement in the appropriate ACP w.e.f. 01.01.1996. Petitioner made a representation dated 14.03.2015 (Annexure P-4), in this regard, but to no avail.

4. 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 on the part of the petitioner. Moreover, petitioner retired upon attaining the age of superannuation being a Class III employee and the impugned order passed after his retirement is not sustainable in law.

5. On the other hand, learned State counsel opposes the prayer of the petitioner.

6. I have heard 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 dated 21.11.2014 passed after

petitioner had retired on 30.04.2013. 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.”*

8. In the aforesaid premise, impugned recovery cannot be effected from petitioner, he being Class-III employee 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 21.11.2014 (Annexure P-3) issued to the petitioner shall stand quashed.

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

(ARUN MONGA)
JUDGE

August 08, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No