

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

**CWP-28290-2017(O&M)**

**Date of decision: July 11, 2022**

Ravinder Kumar Wadhwa

...Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:** Mr. R.K. Malik, Senior Advocate with  
Mr. Sandeep Dhull, Advocate for the petitioner.

Ms. Mamta Singla Talwar, 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 02.02.2017 (Annexure P-8), order dated 27.11.2017 (Annexure P-14), order dated 21.11.2017 (Annexure P-13) and order dated 04.12.2017 (Annexure P-15) whereby pay of the petitioner was re-fixed and recovery of Rs.5,20,992/- was ordered to be recovered from him.

2. Succinct facts first. Petitioner was appointed as Junior Engineer (Mechanical) on regular basis and he joined as such on 18.12.1981. He was promoted as Sub Divisional Officer on 12.09.2014. The Government of Haryana revised the pay-scales of Junior Engineers vide its letter dated 27.01.1992 (Annexure P-1) w.e.f. 01.01.1992. Petitioner along with others filed CWP-15017-2008 raising grievance of anomaly in the scales stating it ought to have been revised w.e.f. 01.01.1986 instead of 01.01.1992. Said writ petition was allowed by this Court vide judgment dated 12.02.2009

(Annexure P-2). In compliance thereof, petitioner was granted the scale of Rs.1640-2900 w.e.f. 01.01.1986. All the Junior Engineers, on completion of 15 years' regular and satisfactory service, were entitled to the scale of Rs.2000-3200/- w.e.f. 01.01.1986. The petitioner completed 15 years of regular and satisfactory service on 18.12.1996, but said benefit has not been granted to him. Vide an office order dated 08.05.1998 (Annexure P-3), petitioner was granted the benefit of 1<sup>st</sup> ACP, and upon completion of 20 years' regular and satisfactory service, he was granted the benefit of 2<sup>nd</sup> ACP vide office order dated 30.05.2002 (Annexure P-4) w.e.f. 18.12.2001. The Government of Haryana vide letter dated 05.09.2007 (Annexure P-5) took a decision that all the Junior Engineers after completion of 18 years' regular and satisfactory service will be designated as Additional Sub Divisional Engineers and will be granted the scale of Rs.7,500-13,000/-. Pursuant thereto, petitioner was re-designated as Additional Sub Divisional Engineer and granted said scale w.e.f. 05.09.2007 vide order dated 06.11.2007 (Annexure P-6). Upon completion of 24 years of regular and satisfactory service, petitioner was granted the benefit of 3<sup>rd</sup> ACP w.e.f. 01.09.2014 vide order dated 23.04.2015 (Annexure P-7).

The Engineer-in-Chief wrote a letter dated 02.02.2017 (Annexure P-8) to all Superintending Engineers of the Irrigation & Water Resources Department, Haryana that as per ACP Rules, only those Junior Engineers who are duly qualified for promotion as Sub-Divisional Officers are entitled to the benefit of ACPs and direction was issued that those who have not passed the departmental examinations, the benefit of ACPs already granted to them be withdrawn after completing the formalities of show-cause notice etc.

Petitioner had passed all examinations required for promotion as Sub Divisional Officer on 10.02.2014. Since, on 10.02.2014, petitioner had completed more than 16 years of service, he was granted the benefit of 2<sup>nd</sup> ACP w.e.f. 10.02.2014 when the petitioner passed the requisite departmental examinations. The petitioner was issued show-cause notice dated 03.08.2017 (Annexure P-9) as to why benefit of ACPs already granted to him before passing the departmental examinations be not withdrawn. Petitioner made a written representation dated 16.08.2017 (Annexure P-10) for supplying him some documents in order to effectively reply to the said show-cause notice, but neither any document was supplied to him nor any reply was given. Executive Engineer wrote a letter dated 26.10.2017 (Annexure P-11) to the Superintending Engineer requesting the latter to issue necessary instructions to withdraw the benefit of 1<sup>st</sup> ACP granted to the petitioner w.e.f. 01.01.1996 and 2<sup>nd</sup> ACP w.e.f. 01.01.2002. The Superintending Engineer vide order dated 10.11.2017 (Annexure P-12) directed that the petitioner is entitled to 2<sup>nd</sup> ACP w.e.f. 10.02.2014 and 3<sup>rd</sup> ACP w.e.f. 01.09.2014, granted the same and also directed to fix the pay accordingly. It was held in the said order that the petitioner is entitled to 3<sup>rd</sup> ACP w.e.f. 01.09.2014. However, vide impugned order dated 21.11.2017 (Annexure P-13) passed by the Executive Engineer, the benefit of 3<sup>rd</sup> ACP has been withdrawn without any show-cause or any opportunity of hearing. Vide order dated 27.11.2017 (Annexure P-14), the Executive Engineer re-fixed the pay of the petitioner granting the benefit of 2<sup>nd</sup> ACP w.e.f. 10.02.2014 i.e., the date when petitioner passed the departmental examinations prescribed for the post of Sub Divisional Officer. Pay of the petitioner was fixed without granting benefit of 3<sup>rd</sup> ACP w.e.f.

01.09.2014. Pursuant thereto, vide order dated 04.12.2017 (Annexure P-15), petitioner was directed to deposit the recovery amount of Rs.5,20,992/-.

3. Learned Senior counsel for the petitioner would argue that impugned orders as passed are illegal and arbitrary and contrary to the principles of natural justice. The excess amount, if any, was not paid on account of any misrepresentation or fraud on the part of the petitioner. Learned Senior counsel relies on the decision of Apex Court rendered in **State of Punjab and others versus Rafiq Masih**, reported as **AIR 2015 (SC) 696**. He also relies on the decision dated 05.05.2015 of this Court rendered in **CWP-4575-2014** titled **Kamlesh Jain versus Haryana Warehousing Corporation** and decision dated 21.04.2016 of a Division Bench of this Court rendered in **LPA-1346-2015** titled **Haryana Warehousing Corporation versus Kamlesh Jain** to support his argument that in the absence of any concealment and/ or misrepresentation on the part of the petitioner, benefit, if any, wrongly given cannot be withdrawn.

4. Learned State counsel has strenuously opposed the petition saying that the petitioner was not actually eligible for or entitled to the grant of benefit of 3<sup>rd</sup> ACP from 01.09.2014 as he had not qualified the departmental examination and, therefore, its benefit was not given to him while fixing his pay vide impugned order dated 27.11.2017 (Annexure P-14). Reliance is placed on the Apex Court judgment rendered in the case titled **High Court of Punjab and Haryana and others versus Jagdev Singh**, reported as **2016 (4) S.C.R. 286** and in particular, Para-11 thereof, which is as below:-

*“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”*

5. Relying on the above, learned State counsel would argue that having given the undertaking, in the instant case as well, the petitioner cannot now stage a *volte face* and take the plea that since there was no misrepresentation and/ or fraud committed of any kind by him to receive the excess payment on account of wrong fixation of his salary and therefore, the undertaking would not apply to him.

6. In order to test the applicability of the aforesaid argument on the petitioner, it would be apposite to reproduce the undertaking dated 20.01.1998 (Annexure R-3 colly) given by him, which is as below:-

*“I hereby undertake that any excess payment that may be found to have been made as a result incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.”*

7. First the judgment relied upon by the learned State counsel. The principle enunciated therein based on the parameters laid down in **State of Punjab and others versus Rafiq Masih**, reported as **AIR 2015 (SC) 696** is applicable to those cases where the payment is found to have been made in excess on account of revision in the pay-scale, as is clearly stated in Para-11 thereof. Instant is a case which concededly does not arise out of any revision of the pay-scale, but on account of undue benefit of ACP granted to the petitioner, despite his not being eligible for the same. The eligibility for according the benefit of ACP is two-fold i.e., on account of completion of 10

years of service (first ACP) and thereafter, on completion of 20 years (second ACP) alongwith having qualified the departmental examination is a *sine qua non*. Mere completion of 10 and 20 years would not automatically entitle a Junior Engineer to seek the benefit of ACP. The Department was fully conscious of the same and without verifying whether the petitioner had qualified the departmental examination, the benefit of ACP was no doubt accorded to him on completion of 10 and 20 years of service. It is also candidly conceded that inadvertence was on the part of the Department. It is not the case of the Department that petitioner had at any time committed any fraud and/or misrepresented that he had qualified the requisite examination. On self-discovery of its own mistake, steps were taken by the department vide the impugned recovery notice for making the recovery as well as removing the pay anomaly for future. In this aspect, reference may also be had to the applicable administrative instructions dated 20.01.2017 (Annexure P-16) issued by the office of the Chief Secretary, which envisage as below:

“ XXXX

3. *Accordingly the following clauses are hereby laid down to regulate the issue of recovery as such with a direction for the compliance with the same meticulously:*

- I. Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service) may not be made.*
- II. Recovery from retired employees or employees who are due to retire within one year, of the order of recovery may not be made.*
- III. Recovery may not be made 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 may not be made 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. *Recovery cannot be made 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.*

VI. *The principle enunciated in clauses I, II and III above cannot apply to a situation where an employee as well as other claimant/ recipient to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded where he has submitted an undertaking while receiving the benefit/ payment and he shall be bound by the undertaking.*

4. *The above provision of exemption shall not be applicable and recovery shall be made where excess payment received by the claimant/ recipient is due to misrepresentation made or/ and fraud played by the recipient.*

5. *The responsibility of the erring officers/ officials responsible for making excess payment, in case of error (other than negligence/ lapse/ malafide) is required to be fixed, after adopting the proper procedure.*

6. *In case of any negligence/ lapse/ malafide on the part of person responsible for making excess payment, action shall be taken against him, after adopting the proper procedure, and recovery shall also be made from him.*

7. *A clear undertaking must also invariably be obtained from every Government Employee/ Pensioner/ any of the Claimants/ Recipients whatsoever while making payment other than the routine/ regular salary/ pension (in case of Government Employee/ Pensioner) to the effect of refunding the excess amount, if so found."*

8. No doubt, in the cases where the recipient of wrong fixation had given undertaking, he is to be held accountable in terms of the undertaking and even recoveries can be made. But what is being ignored is that the undertaking is not to be read *de hors* the context in which it is given and the context has been clearly stated in Paras-4 to 7 of the instructions *ibid*. A conjoint reading of the same read with the undertaking reveals that the

petitioner's case is not covered by any of the clauses 4, 5, 6 & 7 of the aforesaid instructions. Assuming the interpretation as resorted by the learned State counsel that the undertaking would cover all those cases where the benefit has wrongly been given by wrong pay fixation due to pay revision, it cannot be said that the petitioner's undertaking reproduced herein above also extends to and covers any excess payment by the grant of wrong benefit of ACP as in the instant case. Furthermore, even if the undertaking would apply, then too Clause 3(II) of the aforesaid instructions gives immunity to an employee who is slated to retire within one year and even if the benefit is wrongly given to him, same cannot be subjected to recovery, but no doubt corrective future measures can be taken.

9. The Supreme Court has rendered a judgment in **State of Punjab and others** versus **Rafiq Masih**, reported as **AIR 2015 (SC) 696**, wherein following principles *qua* recovery have been enunciated:

*“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.”*

10. As against the above averments, petitioner has specifically pleaded that there is no misrepresentation of any kind on his part which led to granting of the benefit of ACPs and in any case, being Class-III employee, he would not in a position in any manner to be of any influence of superiors to accord him the benefit. Clearly, inadvertence is on the part of the Department and petitioner cannot be put to adverse consequences.

11. The impugned order Annexure P-15 directing recovery of the amount of Rs.5,20,992/- from the petitioner was passed on 04.12.2017. The petitioner was due to retire on 31.12.2017. It is not disputed that he actually retired on that date. As noted above, in **AIR 2015 (SC) 696** supra, it was held that where payments have mistakenly been made by the employer in excess of their entitlement, recoveries by the employers would be impermissible in law, *inter alia*, in case of employees who are due to retire within one year of the order of recovery. In fact, provision to the same effect has also been made in the policy instructions dated 20.01.2017 **Annexure P-16** issued by the State Government. This being the position, the said impugned order is, therefore, liable to be struck down being in contravention of the mandate of the Apex Court as also the State Government's own policy instructions dated 20.01.2017 **Annexure P-16**.

12. The Learned Senior counsel for the petitioner could not refute the contention of the learned State counsel that the petitioner was not actually eligible for or entitled to the grant of benefit of 3<sup>rd</sup> ACP from 01.09.2014 as he had not qualified the departmental examination and, therefore, its benefit

was not given to him while fixing his pay vide impugned order dated 27.11.2017 (Annexure P-14).

13. As a result of above discussion, the petition is allowed to the limited extent that the impugned recovery notice dated 04.12.2017 Annexure P-15 issued to the petitioner shall stand quashed.

(ARUN MONGA)  
JUDGE

July 11, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No