

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

CWP No. 8355 of 2016

Date of Decision : 19.12.2022

Mohinder Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Umesh Narang, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

In the present petition, the grievance of the petitioner is that benefit of the increment, which was granted to him for discharging the duties of the higher post, has been withdrawn by the respondents and that too in an illegal and arbitrary manner and, therefore, the action of re-fixing the salary of the petitioner vide order dated 01.08.2013 (Annexure P-3) and consequent recovery of the excess amount is totally arbitrary and illegal.

Learned counsel for the petitioner further submits that the recovery of the excess amount paid cannot be done from the petitioner as the petitioner was not at fault at any given point of time, there was no misrepresentation on the part of the petitioner to claim the benefit, which is now being withdrawn, which has led to the recovery of the excess amount

and hence, the impugned order dated 26.10.2015 (Annexure P-5) by which recovery of the excess amount to the tune of ₹1,70,532/- has been ordered, be set-aside.

After notice of motion, the respondents have filed the reply, wherein, they have clarified certain facts. As per the respondents, the petitioner, who was working as a Master, was granted promotion to the post of Lecturer in the year 2007. Thereafter, the Lecturers agitated that they are entitled to be promoted to the post of Headmaster by considering them in the cadre of Master as their juniors have been promoted on the said rank and now they are working on a cadre post, which is higher than Lecturer. Despite working as a Lecturer, the petitioner was given a fresh promotion to the post of Headmaster in the year 2009 by treating Master as a Feeder Cadre. While effecting both the promotions, inadvertently, increment was given for assuming the duties of higher post whereas, the first promotion of the petitioner from Master to Lecturer was treated to have been withdrawn and after withdrawing the said promotion, even the increment granted to the petitioner at the said given point of time was liable to be withdrawn hence, the withdrawing of the said increment from the petitioner is perfectly valid and legal and as the amount paid to the petitioner was over and above his entitlement, the recovery is also permissible.

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

The first question is to be decided whether the withdrawal of the increment of the petitioner is in accordance with the rules governing the service or not. It is a matter of fact that from the post of Master, an

employee could be promoted as a Lecturer as well as a Headmaster. The choice/option was to be given by the employee concerned. As per the petitioner, without taking any option from the petitioner, he was initially promoted as a Lecturer in July, 2007 on which post petitioner joined and he was granted the benefit of one increment on assuming the duties of a higher post. Thereafter, the Lecturers, who were working in the State of Haryana, raised a grievance that though they are working as Lecturers but the junior employees, who are working in the Cadre of Master, are being promoted as a Headmaster, which is a higher post than the Lecturer hence, they be given option to opt for the post of Headmaster by treating them in the Cadre of Master instead of Lecturer. The said claim of the Lecturers was accepted by the respondent-State and the petitioner was promoted as a Headmaster by treating him in the Cadre of Master in the year 2009. While giving the benefit of promotion to the post of Headmaster once again a benefit of increment was given. Later on, the respondents realized that as the second promotion of the petitioner from the post of Master to that of Headmaster is also from the same Cadre of Master hence, the petitioner was only entitled for one increment, which had already been given to him while giving him promotion to the post of Lecturer in the year 2007 hence, the benefit of increment could not have been given to him again while extending the promotion to the post of Headmaster in the year 2009. The said act of the respondents cannot be treated as arbitrary for the reason that the promotion of the petitioner given in the year 2009 to the post of Headmaster is also from the post of Master only and not from the post of Lecturer hence, once it is a conceded position that petitioner's promotion to the post of

Headmaster was by treating the seniority of the petitioner in the Cadre of Master, therefore, the withdrawal of increment, which was given to the petitioner in the year 2007, was perfectly correct. No grievance can be made by the petitioner with regard to the re-fixation of his salary as done by the respondents.

The second question, which arises is whether, the respondents could have effected the recovery on account of the excess amount paid to the petitioner.

Learned counsel for the respondents conceded the fact that there was no misrepresentation on the part of the petitioner at the time when he was extended the increment either at the first promotion i.e. Master to Lecturer in the year 2007 or thereafter in the year 2009 from Master to Headmaster.

That being so, once there was no misrepresentation on the part of the petitioner, the payment of excess amount cannot be recovered keeping in view the decision of the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022***, wherein, it has been held that where there is no fraud played by an employee in getting a particular amount then the excess payment made cannot be recovered. The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a

particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

In the present case, the respondents themselves extended the benefit of increment to the petitioner on their own hence, as the petitioner never misrepresented or played any fraud in getting the excess amount, the recovery of the excess amount paid to the petitioner could not have been done from the petitioner.

Keeping in view the above, the present petition is allowed. Order dated 26.10.2015 (Annexure P-5) qua recovery of the excess amount is set-aside. Let the respondents refund the excess amount to the petitioner, if recovered from the petitioner, within a period of two months of the receipt of copy of this order.

December 19, 2022
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No