

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

CWP-21747-2021 (O&M)

Date of Decision : August 02, 2022

B.P. Sharma

.. Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. V.D. Sharma, Advocate, for the petitioner.

Mr. Dhananjay Mittal, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

Learned counsel for the petitioner argues that though, in the present petition, the challenge is also to the withdrawal of the benefit of ACP but the petitioner restricts his claim in the present petition with regard to the recovery, which is being done after withdrawing the benefit of ACP which was extended to him in the year 2017.

As per the facts mentioned in the petition, the petitioner retired from service on 31.03.2006. The respondents issued a clarification on 06.01.2017 (Annexure P-2) to the effect that where, the experience required for promotion under the rules governing the service, is more than the period prescribed for the grant of ACP, the rules should be amended suitably so as to bring them in consonance with Rules for the grant of ACP. Keeping in view the said letter, the petitioner was extended the concession of ACP on

28.03.2017. At the time when the petitioner retired, the petitioner was not

eligible for promotion keeping in view the experience provided but, keeping in view the letter issued by the respondents dated 06.01.2017 (Annexure P-2), the petitioner was extended the benefit of ACP. After the grant of the benefits of ACP, the consequential benefits were also extended to the petitioner including the arrears and his pay was also re-fixed accordingly.

After the grant of the benefit to the petitioner, the respondents realize that the petitioner has already retired even prior to the issuance of the policy Annexure P-2, and the said policy was implemented retrospectively qua the petitioner, the benefit of ACP extended to the petitioner on 28.03.2017 was withdrawn by the respondents by passing the impugned order dated 06.10.2021 (Annexure P-9) and directed that excess amount paid to the petitioner, be recovered. The said withdrawal is under challenge in the present petition.

Learned counsel for the petitioner argues that though the withdrawal of the ACP as extended to the petitioner vide order dated 28.03.2017 (Annexure P-4) is also under challenged but the petitioner does not wish to press the said claim but only restricts his claim with regard to the recovery of the excess amount which is being sought to be recovered from the petitioner after withdrawing the said benefits, which is impermissible as the petitioner has already retired from service.

After notice of motion, the respondents have filed the reply where, they have justified that the grant of the benefit of ACP to the petitioner vide order dated 28.03.2017 (Annexure P-4) was erroneous and order dated 06.01.2017 (Annexure P-2) was wrongly interpreted by the respondents and hence, the mistake was rectified by the respondents by withdrawing the benefit of ACP extended to the petitioner with

retrospective effect.

Learned counsel for the respondents submits that as the main benefits have been withdrawn, the excess amount paid to the petitioner is liable to be recovered being the public money.

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

The only question which arises for determination in the present petition is whether, the excess amount paid to the petitioner can be recovered. Nothing has come on record that the petitioner misrepresented in any manner to claim the benefit, which was extended to him on 28.03.2017 by which, the benefit of ACP was extended to him with retrospective effect. Once, there is no misrepresentation on part of the petitioner, the excess amount paid by the respondents themselves, cannot be recovered keeping in view the settled principle of law settled by 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.*** According to the said judgment, once an employee has not misconducted himself or has misrepresented or has not played any fraud so as to get the benefit, though not entitled for, the excess amount paid 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.”

Further, even as per the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***, once an employee has already retired, no excess amount paid can be recovered. The relevant paragraph of the said judgment is as under:-

“12. 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 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."

Learned counsel for the respondents has not been able to differentiate the case of the petitioner from the law cited hereinbefore so as to contend that the recovery of the excess amount can be done from the petitioner.

Keeping in view the above, though the claim of the petitioner only with respect of the recovery of the excess amount paid is allowed. The respondents will be treated well within their right to withdraw the benefit of ACP but not the excess amount paid on the said account.

The present writ petition is allowed in above terms.

August 02, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No