

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

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CWP-3299-2022

Date of decision : 22.02.2022

Union Territory, Chandigarh Administration and another

....Petitioners

V/s

Sundaram and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Parminder Singh Kanwar, Advocate for the petitioners.

G.S. SANDHAWALIA, J. (ORAL)

Challenge in the present writ petition is to the order dated 01.02.2021 (Annexure P-2) passed by respondent No.2-Tribunal while setting-aside the order of recovery of an amount of ₹8,11,597/- paid to respondent No.1 on account of excess salary and gratuity allegedly for the period 2005 to 2013 which was sought to be recovered. The Tribunal, however, did not grant the benefit of the claim to the extent of ante-dating the date of retirement of respondent No.1 from 31.08.2013 to 30.09.2005.

The Tribunal recorded a finding that respondent No.1 had actually worked from the year 2005 to 2013 i.e. for 8 years and, thus, the recovery of more than ₹8.00 lacs from an illiterate worker/labourer was not justified. However, his claim to get his date of birth corrected in the record as 01.09.1953 was rejected by noticing the fact that he was putting his thumb impression in support of his claim for the date of birth and, therefore, the affidavit for such claim had no value.

The arguments raised by the counsel for the U.T. Administration is that there is fraud and misrepresentation on the part of respondent No.1 as he has concealed his correct date of birth as 13.09.1945 and therefore, he continued to

remain in service for 8 years and received the salary and other benefits during that period and thus, the recovery was justified.

A perusal of the paper-book would go on to show that in the seniority list of daily wager workers/Casual Labourers working in the Estate Office, U.T. Chandigarh when respondent No.1 was transferred to Estate Office on the permanent basis vide order dated 03.09.1997, his date of birth was recorded as 01.09.1953. It is on the basis of this, he continued to work till 31.08.2013. Apparently, no effort as such was made by the Estate Office, U.T. Chandigarh to confirm the fact that the date of birth of respondent No.1 was actually 13.09.1945 and not 01.09.1953. Respondent No.1 had filed Original Application before the Tribunal in the year 2018 seeking the benefit of regularisation on the basis of the judgment of the Apex Court in Civil Appeal No.6779/2009 titled as *U.T. Chandigarh and another vs. Sampat and others* decided on 03.04.2014. The said benefit was granted to him on 10.01.2019 (Annexure A-5) by the Tribunal. While complying with the said order, the Estate Officer, U.T. Chandigarh vide order dated 26.07.2019 (Annexure A-2) regularised the service of respondent No.1 for the grant of pensionary benefits w.e.f. 29.09.2005 before his actual date of retirement i.e. 30.09.2005. The factum of the transfer of respondent No.1 from Engineering Department, U.T. Chandigarh to the Estate Officer on permanent basis referred to in the said order as 03.07.1997, instead of 03.09.1997, seems to be a clerical mistake. Even at the stage of regularisation, it is apparent that it was not noticed by the Estate Office, U.T. Chandigarh to the effect that respondent No.1 was born in the year 1945 and no recovery as such was ordered. Thereafter, at the back of respondent No.1 while processing his case for pension, an outstanding amount of ₹8,11,597/- had been calculated which was the subject matter of

We are of the considered view that the present case is covered by the ratio of judgment of the Apex Court titled as *State of Punjab and others vs. Rafiq Masih (While Washer) and others*, (2015) 4 SCC 334 whereby following set of employees are protected from the recoveries where payments have mistakenly been made by the employer:-

- 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.

Respondent No.1 would, thus, fall in the cases of retired employees under Clause (ii) and also under Clause (v), wherein there 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 from a daily wage.

As noticed above, the Tribunal has also noticed the status of respondent No.1 as such and thus, recovery at this stage would amount to taking away the benefit of regularization which was being granted. It was for the Administration to keep their house in order at the time when a person (respondent

No.1) was being transferred to the Estate Office and consider the genuineness and correctness of his date of birth from the record of the department where he had been initially engaged. After taking his services for a period of over 8 years from 2005 to 2013, the recovery of over ₹8.00 lacs from a Class IV employee would fall within the clause being harsh and arbitrary.

In such circumstances, we are of the opinion that the reasoning given by the Tribunal is well justified. Thus, no case is made out to exercise the extraordinary jurisdiction of this Court to interfere in the well reasoned order of the Tribunal, which has rightly set-aside the order of recovery against respondent No.1. Resultantly, the present writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

February 22, 2022
Ajay

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