

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CWP-5148 of 2019

Date of Decision:01.02.2023

Ex-SI/GD Bachittar Singh (Retd.)

....Petitioner(s)

Versus

Union of India and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rahul Jaswal, Advocate,
for the petitioner.

Ms. Anju Rathore, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing of the impugned recovery orders dated 27.09.2018 and 03.10.2018 vide Annexure P-2 and P-3 respectively issued by respondent No.3 being contrary to the law laid down by the Hon'ble Supreme Court in **State of Punjab and others Rafiq Masih 2015 (4) SCC 334**, with a further directions for seeking a writ in the nature of *mandamus* directing the respondents to refund the entire amount which has been recovered from the petitioner.

Learned counsel for the petitioner submitted that the petitioner was earlier serving in the Indian Army from 26.11.1983 to 30.11.2011 and he was discharged from the post of Honorary Lieutenant and after the petitioner

was discharged from the aforesaid service, he was appointed as Sub-Inspector in the Para-Military Force, i.e. the CRPF who are the respondents in the present case and he served in the same department with effect from 20.12.2011 till 19.12.2018. The petitioner was appointed on contractual basis and he was given pay scale in the Pay Band of 9300 with GP 4200. Thereafter, the CRPF itself implemented the 7th Central Pay Commission Report and benefit was also given to the contractual employees including the petitioner. Thereafter, the pay of the petitioner was fixed on the basis of revised pay in accordance with the 7th Pay Commission. In this way, the petitioner started drawing the revised pay with effect from 01.01.2016. However, with effect from 30.09.2016 the benefit of revised pay scale was not granted to the petitioner and vide Annexure R-6 dated 06.09.2018 the CRPF sought clarification with regard to the admissibility of implementation of 7th Pay Commission to the contractual employees and sought specific clarification from the higher officers as to whether the ex-Army personnel who have been engaged on contractual basis in CRPF in the Pay Band of 9300 with GP 4200 are entitled for grade pay and allowances on the implementation of 7th Pay Commission with effect from 01.01.2016 alongwith ration money and dearness allowance as per declared rate or otherwise or they are still entitled to the pre-revised pay of 9300+4200 alongwith DA+RM as admissible at that time only. Thereafter, vide Annexure P-2 dated 27.09.2018 the concerned higher authorities of the CRPF issued a letter in which it was stated that it is clarified that ex-Army personnel/employees in CRPF are purely on contractual basis and they are not eligible to draw revised pay and allowances as they are engaged only on the old pay scale as per 6th Pay Commission. It further directed that in view of the

01.01.2016 to 30.09.2016 is now required to be recovered as per details mentioned Appendix-A. Thereafter, vide Annexure P-3 dated 03.10.2018 it was directed that qua the petitioner the outstanding dues as recovery of Rs.1,46,343/- and out of which Rs.35,400/- has already been recovered and remaining amount of Rs.1,10,943/- be also recovered from the petitioner. Both the aforesaid Annexure P-2 and P-3 are impugned in the present petition.

Learned counsel for the petitioner submitted that the scope of the present petition is only limited to the extent of recovery and it does not pertain to the right of the petitioner to be granted the benefit of 7th Pay Commission. He submitted that the financial benefit to the extent of Rs.1,46,343/- has been extended to the petitioner by the respondent authorities on their own and thereafter the benefit was given to him for a period of 9 months and it is not a case of the respondent that there had been any fraud, undue influence or any mis-representation committed by the petitioner. He submitted that according to the petitioner, the petitioner was entitled for the revised 7th Pay Commission and when he received the salary with effect from 01.01.2016 it was quite logical and it is not a case where the petitioner ought to have known that an excess payment has been made to him. He submitted that had it been a case that there was some unusual or unnatural enrichment by way of payment in his account that he would have reacted to the same but it is a case where the respondents themselves granted the benefit of 7th Pay Commission to the petitioner and the other similarly situated employees, but thereafter they took a U-turn and wrote a letter vide Annexure P-2 as a clarification that since the petitioner and other co-employees who are from the Army Commissionery and are on contractual basis are not entitled for the benefit of 7th Pay Commission report that the said amount was not

light of 7th Pay Commission report. He submitted that in view of the aforesaid special circumstances, the case of the petitioner is squarely covered by the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih***'s case (supra).

On the other hand, Ms. Anju Arora, learned counsel appearing on behalf of the respondents submitted that the petitioner was not entitled for the grant of implementation of 7th Pay Commission since he was a contractual employee and any benefit which has been given to him was a mistake which could have been rectified and the same was rectified immediately and therefore the present petition is devoid of any merit.

I have heard the learned counsels for the parties.

It is a case where the petitioner had served in Indian Army and after his discharge he was re-employed on contractual basis with the CRPF and he served there from 20.12.2011 to 19.12.2018 for a period of about seven years. The CRPF itself had implemented the 7th Pay Commission report to its employees and benefit was also granted to the contractual employees such as the petitioner. For nine months the benefit remained but thereafter it was withdrawn on the basis of a clarification letter issued. In this way the petitioner got additional salary from the respondent CRPF but it is not in dispute that it is not a case of any fraud, undue influence or misrepresentation by the petitioner. Learned counsel for the petitioner has relied upon a judgment of the Supreme Court in *Rafiq Masih* (supra) and also referred to a Full Bench judgment of this Court in **Budh Ram and others versus State of Haryana and others** (CWP-2799 of 2008, date of decision 22.05.2008) (Annexure P-6). Various categories have been laid down by the Hon'ble Supreme Court in the aforesaid judgment of *Rafiq Masih*'s case but the same are not exhaustive in nature. Last para is reproduced as under:-

“18. 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.”

Although the petitioner falls in the Category-B and he therefore would not be covered under Clause (i), (ii), (iii) and (iv) but it has to be considered by this Court in the light of facts and circumstances, as to whether the petitioner is covered in the Category (v) or not. As per Category (v), in case the Court arrives at a conclusion that recovery if made from the employee would be iniquitous or harsh or arbitrary to such an extent as would far out way the equitable balance of the employers' right to recover then it can be held that there was no justification for the employer to have recovered the

This Court is in agreement with the argument raised by learned counsel for the petitioner that had it been a case that the receiving of the excess amount in the salary was either improbable or had it been a case of unjust enrichment due to some glaring mistake of the employer then in that situation it was the duty of the employee to have reacted. In that eventuality perhaps the employer could have recovered the amount subsequently but here is a case where the respondents themselves had implemented the 7th Pay Commission report qua the contractual employees and granted them the benefit for a period of nine months but after a period of about two years, they took a U-turn and they ordered the amount to be recovered from the petitioner.

It is not a case where at the time of grant/implementation of 7th Pay Commission report to the petitioner that there is any kind of undertaking given by the petitioner. During the course of arguments, a specific query was put to the learned counsel for the respondents, as to whether any such undertaking was given or not, to which she replied that no such undertaking was given and therefore it cannot be said that the petitioner was at notice with regard to the payment and in that context even judgment of the Supreme Court in High Court of Punjab & Haryana and others versus Jagdev Singh 2016 (14) SCC 267 will not apply in the facts and circumstances of the present case.

Considering the aforesaid facts and circumstances, this Court is of the view that the case of the petitioner would therefore fall in last Category (v) of paragraph 18 of the judgment of **Rafiq Mashih** (supra) since this Court is of the view that the recovery, if any, made from the petitioner would be inequitable, harsh and arbitrary and the same cannot be recovered from the

In view of the aforesaid peculiar facts and circumstances, the present petition is allowed and the impugned order (Annexure P-3) is hereby quashed. It is directed that no recovery for an amount of Rs. 1,46,343/- for a period from 01.01.2016 to 30.09.2016 can be made from the petitioner. The recovered amount of Rs.35,400/- shall be refunded to the petitioner alongwith interest @6% per annum within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

February 01, 2023
dinesh

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