

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

112

**CWP-12998-2023
Decided on : 21.09.2023**

Rajni and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Ms. Divya Sharma, Advocate
for the petitioners.

Mr. Pankaj Middha, Addl. AG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, challenge is to the order dated 03.10.2022 by which a direction was given by respondent No. 1 to respondent No. 2 to withdraw the additional increment granted to the petitioners on account of passing of the type test in the additional language as well as the orders dated 18.11.2022 (Annexure P-2) and letter dated 19.01.2023 (Annexure P-3) by which, the said benefits had been withdrawn from the petitioners.

2. Certain facts needs to be mentioned for the correct appreciation of the order.

3. The petitioners were appointed as clerks on daily wage basis with the Department of Forest starting from the year 2008 onwards and the services of the petitioners were regularized in the year 2014 under the policy dated 18.06.2014. After the regularization of the services of the petitioners, the petitioners demanded that as some of them have already passed the type test in second language also, keeping in view the instructions issued by the Government of Haryana dated 26.11.1993, copy of which has been appended as Annexure P-5,

they are entitled for the additional increment. The department considered the claim of the petitioners and granted the petitioners an additional increment on account of passing of the second language type test. Thereafter, the department realized that starting from the year 2013, the department has amended Haryana State Forest Department, Ministerial (Group C) Service Rules, 1998 and as per the said amendment, the type test has already been substituted with the State Eligibility Test in Computer Appreciation and Applications (hereinafter referred to as 'SETC') and the regularization of the services of the petitioner is after the said amendment, hence, the petitioners could not have been granted the benefit of additional increment of passing of the type test in the second language.

4. Keeping in view the said fact, vide Annexure P-1, direction was given by respondent No. 1 to respondent No. 2 to take appropriate action for withdrawing the additional increment granted to the petitioner which directions have been implemented by the forest department so as to withdraw the benefit from the petitioners.

5. In the present petition, the direction given by respondent No. 1 to respondent No. 2 to withdraw the benefit of additional increment as well as the order of actually withdrawing the benefit of increment from the petitioners have been impugned.

6. Learned counsel for the petitioners argues that the prayer of the petitioners in this petition is that once the benefit has already been extended to the petitioners without any misrepresentation on the part of the petitioners, benefit once granted, cannot be withdrawn.

7. The second prayer of the petitioners is that under any circumstances, the financial benefits already extended to them cannot be withdrawn and no

recovery can be done from them.

8. At the time of hearing, learned counsel for the petitioners submits that the petitioners are only restricting their claim with regard to the recovery of the excess payment which is being done after withdrawal of the benefit of additional increment.

9. Learned counsel for the respondents submits that once the benefits were wrongly given to the petitioners without there being any entitlement especially in view of the fact that on the date when the services of the petitioners were regularized in the year 2014, the type test had already been substituted with the SETC and as the benefits were wrongly granted qua the grant of additional increment, the State is well within its right to recover the amount paid to the petitioners being a public money.

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

11. The only question which is being pressed in the present petition is whether after the withdrawal of the benefit of the additional increment, can the respondent make recovery from the petitioners or not. The said issue is already well settled by the Hon'ble Supreme of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***. As per the said judgment, in paragraph 12, it has been mentioned that where an employee continues to get the benefits for more than a period of 5 months, in case the same is withdrawn, no recovery can be done. Further, it has been mentioned that where an employee is working on Group 'C' or Group 'D' post, the recovery cannot be effected. 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.”

12. Learned counsel for the respondent has not been able to dispute the fact that the petitioners continue to get the benefits for more than 5 years and they are working on Group ‘C’ post. Hence, as per the judgment in **Rafiq Masih's case (supra)**, no recovery can be done from the petitioners.

13. Apart from this, as per the judgment 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, where there is no misrepresentation on the part of an employee to get the benefit and the said benefit has been withdrawn, no recovery can be done. 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.”

14. Hence, as per the settled principal of law, after the withdrawal of the benefit of additional increment, no recovery can be done from the petitioners. Therefore, the respondents can only withdraw the benefits of the additional increment from the petitioners so as to retain the salary but no financial benefits already paid to the petitioners will be reversed.

15. The present petition is disposed of with the aforesaid terms.

(HARSIMRAN SINGH SETHI)
JUDGE

21.09.2023

Mehak

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No