

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11399 of 2016 (O&M)

Date of Order:16.05.2023

Durgesh Kumari

.Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunny Singla, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Sr. DAG, Punjab

ANIL KSHETARPAL, J

1. The petitioner is a retired Principal. The dispute is with regard to the right of the State to recover the excess payment made to the petitioner.
2. As per the policy instructions issued by the State, the regular employees, who would not participate in the planned strike were held entitled to one advance(pre-mature) increment. There was a lot of litigation with regard to the implementation of the aforesaid instructions. At one point of time, the High Court held that such benefit is available only to the ad-hoc employees also. The Special Leave Petition filed against the judgment of the High Court was dismissed on technical ground. The petitioner, though, was not a regular employee in the year 1978 but was granted the benefit subject to the following conditions:-

“4.By considering the above said matter, on dated 19.11.2012, while hearing all contempt petitions, Hon'ble Punjab & Haryana High Court disposed of the above said contempt petitions and passed the order for making payment to petitioners within two months. It is being

written to you that the current posting address of group of petitioners/adhoc basis employees, in case of their retirement the by obtaining the address of society/school where they have to work after retirement as mentioned in the list attached, the premature increment from dated 17.01.2022 (of 38 months) be paid to them. If they deserve to provide the pension benefits, then all these proceeding be assured for its implementation within time as per order of Hon'ble Punjab & Haryana High Court, a serious notice will be taken in case of negligence happened. This condition be implemented in this regard in the orders to be issued, that in the pending review petitions before Hon'ble Supreme Court filed by the department, the orders passed by appellate will be implemented.”

3. Ultimately, the Supreme Court in **State of Punjab and others vs. Surinder Singh and others**(Civil Appeal no(s).3487-3492 of 2004, decided on 12.02.2015 has held that such a relief is restricted only to the regular employees. It is in pursuant thereto that the amount is sought to be recovered from the petitioner.

4. The learned counsel representing the petitioner contends that though as per the final interpretation of the instructions, the petitioner was not entitled to the benefit however, the petitioner was paid as per the relevant interpretation based on a judgment passed by the High Court, hence the petitioner is still entitled to retain the amount.

5. This Court has considered the submissions of the learned counsel representing the petitioner.

6. There is no substance in the argument of the learned counsel representing the petitioner. It is not in dispute that the petitioner was paid

the benefit subject to the conditions which has already been extracted above. Once the review application filed by the State has been allowed by the Supreme Court, the benefit drawn by the petitioner under the aforesaid instructions is required to be refunded. The judgment passed by the Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer) (2014) 8 SCC 883 is in the context of Class-III and Class-IV employees, whereas the petitioner retired from the post of Principal which is Grade-A post. Hence, the judgment passed in Rafiq Mahsih's case (supra) does not come to the rescue of the petitioner. In any case, once the petitioner knew that the payment made to the petitioner is subject to the outcome of the review in the Supreme Court, she is bound by the same.

7. Consequently, finding no merit, the writ petition is dismissed.
8. All the pending miscellaneous applications, if any, are also disposed of.

May 16, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO