

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

(211)

CWP-12999-2017

Date of Decision : November 21, 2023

Dr. Vimal Jain and others**.. Petitioners****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Lajpat Rai Sharma, Advocate and
Mr. Naveen Kumar, Advocate, for
Mr. Vivek Khatri, Advocate, for the petitioners.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioners is that vide impugned order dated 06.12.2016 (Annexure P-13), the increments which were granted to the petitioners in lieu of the higher qualification have been treated as personal pay and the salary has been refixed.

2. Learned counsel for the petitioners submits that though in the petition, the said order has been challenged but challenge to the said order is not being pressed as only the grievance of the petitioners is that upon the passing of the impugned order, no recovery be done from the petitioners.

3. Learned counsel for the respondents submits that as of now, no recovery has been done from the petitioners as only pay of the petitioners has been refixed by treating the additional increment as the personal pay.

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

5. Keeping in view the facts and circumstances that only grievance raised by the petitioners is that there should not be any recovery from the petitioners in view of 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 which, any amount paid to an employee without there being any misrepresentation, cannot be recovered, hence, upon refixation of the pay of the petitioners as refixed vide order dated 06.12.2016 (Annexure P-13), any recovery, which the respondents have made against the petitioners, is not permissible under law. 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.”

6. The petitioners’ pay will be fixed according to order dated 06.12.2016 (Annexure P-13) but no recovery of any excess amount paid to the petitioners will be done as per the judgment of the Hon’ble Supreme Court of India in ***Thomas Daniel’s case (supra)***.

7. Keeping in view the above, the present writ petition is allowed in above terms. In case any amount has already been recovered from the petitioners, the same will be refunded back to them within a period of two months from the receipt of copy of this order.

November 21, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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