

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

215

CWP-16132-2017

Date of decision :-17.01.2023.

Karnail Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Ranjit Singh Kalra, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana
for respondents No.1 to 3.

SUVIR SEHGAL, J.

Petitioner has approached this Court under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari quashing order dated 07.07.2017, Annexures P-3 and for issuance of a writ of mandamus directing the respondents not to recover the amount of alleged excess payment made to him.

Dispute lies in a narrow compass. Petitioner was appointed as a Helper on daily wages with the Haryana Roadways in 1983. His services were regularized w.e.f. 01.05.1992 after he qualified the department technical test. During his service, he was promoted to the post of Assistant Fitter, Fitter and then as Mechanic after the merger of the post of Fitter in the Mechanic cadre in the year 2012. His pay was fixed vide order dated 03.07.2013, Annexure P-2. There was some error in the fixation of his pay and by impugned order dated 07.07.2017, Annexure P-3, respondents have ordered the recovery of the excess amount paid to him from 01.10.1998 to 30.08.2008.

Upon notice, writ petition has been contested by the respondents by filing written statement. A stand has been taken that the petitioner was given the benefit of technical pay scale of Rs.1200-2040 w.e.f. 29.09.1998 and while fixing his pay, he was inadvertently given the benefit of an increment w.e.f. 01.10.1998 whereas he was entitled to it a year later i.e. on 01.10.1999. This error was rectified, his pay was refixed vide impugned order, Annexure P-3, and recovery was ordered to be effected. It has been submitted that vide letters dated 17.05.2017, Annexure R-1, petitioner of his own volition requested that the increment erroneously granted to him, be withdrawn.

Counsel for the petitioner has made a reference to the Haryana Transport Department (Group C) Haryana Roadways Service Rules, 1995, to submit that the petitioner throughout served on a Group C post and has retired from the post of Head Mechanic in the year 2021. He urges that vide interim order dated 25.07.2017, this Court stayed the recovery from the petitioner and in case it is effected now, it will result in extreme financial hardship. State counsel has, however, opposed the petition and supported the impugned order.

I have heard counsel for the parties and considered their respective submissions.

The matter in dispute stands squarely covered by the judgment of the Supreme Court in **State of Punjab versus Rafiq Masih (White Washer)**, (2015) 4 SCC 334 wherein it has been held 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."

The principle enunciated by the Hon'ble Supreme Court in Rafiq Masih's case (supra) applies to the facts of the present case. Not only that the petitioner belongs to a Group C service but has superannuated during the pendency of the petition and the recovery being sought to be effected is for excess payment made to him for a period of almost a decade.

A perusal of the letter, Annexure R-1, shows that on coming to know of the mistake in the pay refixation, petitioner requested the department to withdraw the increment. There is no request on his behalf that the amount paid should be recovered from him. The letter, Annexure R-1, therefore, cannot be read to mean his consent for effecting recovery.

In view of the above, impugned order, Annexure P-3, is quashed to the extent recovery is being sought to be effected. In case any recovery has been made from the petitioner, it is directed to be refunded to

him within a period of four months from the date of communication of this order.

Writ petition is disposed of.

17.01.2023
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No