

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102) CM-20800-CWP-2023 and
CM-20801-CWP-2023 in/and
CWP-23767-2017
Date of Decision : December 13, 2023

Anju Bala .. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep K. Sharma, Advocate, for the petitioner.

Mr. Pankaj Middha, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-20800-CWP-2023

As prayed for, the application is allowed.

Delay of 19 days in filing the restoration application is
condoned.

CM-20801-CWP-2023

Present application has been filed for recalling the order dated
17.10.2023, by which, the present writ petition was dismissed for non-
prosecution.

Notice of the application to the counsel opposite.

Mr. Pankaj Middha, learned Addl. Advocate General, Haryana,
who is present in Court, accepts notice on behalf of the respondents. He

raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The order dated 17.10.2023 is recalled and the writ petition is restored to its original number and status.

CWP-23767-2017

1. In the present writ petition, the challenge is to the order dated 31.08.2017 (Annexure P-3) by which, recovery of Rs.4,20,928/- has been ordered against the petitioner.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner, who was working as a Staff Nurse with the respondents, had applied for the study leave so as to undergo a regular course at the National Institute of Nursing Education, PGIMER, Chandigarh. The said study leave was applied keeping in view the provisions of the Rules governing the service under Rule 8.126 of the Punjab Civil Services Rules, Volume II. The petitioner was allowed the benefit of study leave and she availed the same.

4. While undergoing the study leave, the petitioner was paid full salary which she was drawing while working as Staff Nurse. Thereafter, the respondents realized that under the Rules under which the petitioner had applied for study leave, only the pay under the Half Pay Leave Rules, can be granted whereas, the petitioner had been paid full salary and the respondents issued a notice for recovery of sum of Rs.4,20,928/- which the petitioner was paid more than her entitlement. The said order dated 31.08.2017

(Annexure P-3), asking the petitioner to deposit back a sum of

Rs.4,20,928/-, is under challenge in the present petition.

5. Learned counsel for the petitioner argues that keeping in view the judgment of the Hon'ble Supreme Court of India in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195*, any amount which has been paid to the petitioner for a continuous period of five years, the said amount could not have been withdrawn. Learned counsel for the petitioner submits that keeping in view the judgment in *Rafiq Masih's case (supra)*, the recovery order against the petitioner is bad in law.

6. Learned counsel for the petitioner further submits that the petitioner being a Class III employee should not have been asked to deposit back the excess amount which she has received by way of salary.

7. Learned counsel for the respondents submits that in the present case, the petitioner has applied for study leave which was granted to her keeping in view Rule 8.126 of the Punjab Civil Services Rules Volume II and under the said provisions, the pay admissible to an employee is as admissible under the Half Pay Leave Rules, as envisaged under Rule 8.122 of the Punjab Civil Services Rules, Volume I, Part I. Learned counsel for the respondents further submits that as the petitioner has been paid excess salary than her entitlement, the action of the Department in recovering the said excess amount is perfectly valid and legal.

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

9. It is a conceded fact that the petitioner has availed a sum of Rs.4,20,928/- beyond her entitlement. The only question is whether the petitioner can be asked to deposit the said excess amount back or not.

10. It is clear from the fact that the petitioner had applied for study leave under Rule 8.126 of the Punjab Civil Services Rules. It is conceded

by the learned counsel for the petitioner that under the said Rule, the leave salary is equivalent to half average pay as defined under Rule 2.7 of the Punjab Civil Services Rules subject to maximum and minimum laid down in those Rules. The relevant portion of the Rules is as under:-

“Leave Salary during Study Leave:

‘During study leave, a Government employee shall draw leave salary equal to half average pay as defined in rule 2.7 of Punjab Civil Services Rules Volume.I, Part I, subject to the Maximum and Minimum laid down in Rule 8.78 and 8.79 thereof or the amount admissible during half pay leave under rule 8.122 of the Punjab Civil Services Rules, Volume I, Part I, as the case may be.’

11. The said Rule was to the knowledge of the petitioner as the petitioner had applied for the study leave under the said Rule itself. Once, the petitioner knew that she is only entitled for half of the pay while undergoing the study leave, accepting the full pay, which was being drawn by her, prior to availing the study leave, amounts to not disclosing the Department about the entitlement of the petitioner and the amount being paid to her during the study leave. If a model employee has to treat an employee as per the rules governing the service, the same parameters are also for the employees. In case, the employee know that he/she is being paid more than her entitlement, then, the employee cannot be allowed to retain the amount.

12. The judgment of the Hon’ble Supreme Court of India in ***Rafiq Masih’s case (supra)***, is only applicable where the employee does not know about his entitlement and was paid a particular amount by the Department on its own.

13. The facts in the present case are different as the petitioner

already knew while applying also that while on study leave, the petitioner will only be entitled for the salary as admissible under the Half Pay Leave Rules whereas, she accepted the full salary without raising objection or informing the Department.

14. Keeping in view the above, the action of the respondents in recovering the amount from the petitioner cannot be treated as arbitrary and illegal.

15. Dismissed.

December 13, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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