

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(223)

CWP-6612-2016  
Date of decision:- 20.01.2023

Akhil Mahajan and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Abhishek Sethi, Advocate for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

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**SUVIR SEHGAL, J. (Oral)**

Petitioners who are serving as Medical Officers and have been granted increments on account of possessing higher qualifications pursuant to instructions dated 03.12.1997, Annexure P-3, have approached this Court seeking two fold reliefs.

Firstly, the petitioners have sought quashing of order dated 02.10.2012, Annexure P-1, whereby the additional increments granted to hem have been ordered to be recovered. Second prayer made by the petitioners is for restoring of the benefits which have been withdrawn.

Heard counsel for the parties.

State counsel has not been able to refer to any material to show that any notice was issued to the petitioners prior to passing of impugned order, Annexure P-1. Petitioners have not been afforded any opportunity to show cause nor to explain the proposed recovery. It is evident that impugned order

has been passed in violation of the principles of natural justice and, therefore, it cannot be sustained.

Still further, it has come on the record that the additional increments were being paid to the petitioners since 1997 pursuant to Annexure P-3 and the recovery is being effected 15 years later in the year 2012. This Court is of the view that the case of the petitioners would clearly falls within the category (iii) of Para 12 of the judgment of the Hon'ble Supreme Court in ***“State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.”*** (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.”*

In view of the above, this Court is of the view that the recovery order Annexure P-1 deserves to be quashed.

In so far as the second prayer is concerned, the same cannot be granted till the petitioners challenge Directorate's letter No. SO/Audit/SA(116)-2007/74-106 dated 01.08.2007 on the basis of which impugned order, Annexure P-1, has been passed. Although counsel for the petitioners has sought an adjournment to amend the petition, but as it is likely to delay the proceedings, his request is declined. This prayer is, however, left open with liberty to the petitioners to approach this Court again, if so advised.

In view of the above, order dated 02.10.2012, Annexure P-1 whereby recovery has been effected from the petitioners is set aside. If any amount has been recovered from the petitioners, it is ordered to be refunded to them within a period of 4 months from today alongwith interest @ 6% from the date of recovery till payment.

Petition is disposed of.

20.01.2023  
Harish Kumar

(SUVIR SEHGAL)  
JUDGE

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |