

255

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

**CWP-20541-2020
Date of Decision: 21.02.2023**

Sant Singh and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Ms. Anju Sharma Kaushik, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction especially in the nature of *certiorari* to set aside letter/order dated 27.02.2020 (Annexure P-7) and letters dated 17.11.2020 (Annexure P-8) qua the petitioners vide which wrongly, illegally and without giving any opportunity of hearing, recovery of arrears has been ordered from the petitioners by the respondent-Department, especially in view of various orders (Annexure P-9) passed by this Court whereby similarly situated persons have already been granted the arrears three years and two months prior to the date of filing of the respective writ petitions.

Learned counsel for the petitioners has submitted that the

present is a petition filed by two petitioners, namely, Sant Singh and Kaur Chand and the aforesaid petitioner-Sant Singh had retired on 31.03.2017 and petitioner No.2-Kaur Chand had retired on 30.04.2019 and they were granted all the benefits that they were entitled to at the time of retirement. Thereafter, since there was instructions from the Government of Punjab pertaining to grant of revision of pay scales on the basis of higher education qualifications vide Annexure P-2 and the petitioners were not granted arrears regarding the same. They filed a writ petition before this Court in view of a judgment rendered by this Court in *CWP-3931-1992* titled as “**Baldev Raj Mittal and others Vs. State of Punjab and others**”, decided on 15.04.2009 and vide Annexure P-4, the writ petition was disposed of on 23.10.2018 with a direction to decide the legal notice in the light of the aforesaid judgment passed in **Baldev Raj Mittal and others’ case (supra)**. Thereafter, vide Annexure P-5 an order was passed in pursuance of the aforesaid directions whereby it was decided that the claim of the petitioners was accepted and allowed the claim of the petitioners and they were granted pay-scale of 620-1200 with initial pay 660 w.e.f 01.01.1978 as per demand made by legal notice dated 02.05.2018. It was further directed that these benefits are payable only till 31.12.1985 and thereafter, they will be entitled the pay scales as per the original designation from 01.01.1986. Thereafter, since the arrears were not paid to the petitioners, they filed another writ petition before this Court i.e. CWP-6820-2020 which was disposed of by this Court on 17.03.2020 vide Annexure P-6 again with a direction to decide a legal notice pertaining to grant of arrears. Thereafter, on the basis of the aforesaid order, petitioner No.1-Sant Singh was granted the benefit of arrear

to the tune of Rs.68,839/- and petitioner No.2-Kaur Chand was granted the benefit of arrears to the tune of Rs.1,63,711/- on 03.11.2020. He submitted that in this way the aforesaid amount was paid to the petitioners. However, after some time, suddenly the respondents-Department made a U-turn and they thought that the arrears could not have been paid to the petitioners and notice was issued to the petitioners with regard to the recovery of the amount vide Annexure P-8. He further submitted that when it was asked from the respondents-Department that what was the reason for recovering of the said amount, they submitted that the Department did not pay arrears to the teachers of secondary education but the arrears were paid by the Government to the elementary teachers and they cannot make discrimination and therefore, they are bound to deposit back the aforesaid amount which was paid to the petitioners.

Learned counsel for the petitioners further submitted that the petitioners had retired in the year 2017 and 2019 respectively and after retirement, payments of arrears have been paid after prolonged litigation and therefore, no recovery can be effected from the petitioners in view of the law laid down by the Hon'ble Supreme Court in “**State of Punjab and others Vs. Rafiq Masih (White Washer) and others**”, 2015(4) SCC 334, especially in view of the fact that they were elementary teachers falling in the category of Group 'C', and even otherwise also after retirement, recovery was not permissible particularly in view of the fact that it was not the case that the petitioners had acted in fraudulent manner or had misrepresented the respondents-Department but rather respondent-Department had paid the arrears in pursuance of prolonged litigation which was filed by the

petitioners and twice directions were issued by this Court. Therefore, the impugned orders are liable to be set aside.

On the other hand, Ms. Anju Sharma Kaushik, learned DAG, Punjab submitted that the respondents were within their competence to withdraw the arrears granted to the petitioners because the teachers of the secondary education were not paid arrears, and therefore, the teachers of elementary education could not be paid the same.

I have heard the learned counsel for the parties.

After prolonged litigation of the petitioners with regard to their right to get the benefit of higher pay-scale in view of higher education, the respondents-Department paid both the petitioners their arrears. At the time of the payment of arrears, both the petitioners had already retired from the Department. Petitioner No.1-Sant Singh had retired on 31.03.2017 and petitioner No.2-Kaur Chand had retired on 30.04.2019. It is not the case of the State that there has been any fraud or misrepresentation by the petitioners. The Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)**, settled the aforesaid issue with regard to the permissibility to recover the money from the retired employee and in the conclusion part laid down the following parameters which are reproduced as under:-

“18. 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 facts and circumstances suggest that the case of both the petitioners falls in category of (i) & (v), and therefore, the case of the petitioners is squarely covered by the aforesaid judgment. The recovery from the petitioners is impermissible under the law. Consequently, the present petition is allowed. The impugned orders/letters vide Annexures P-7 dated 27.02.2020 & Annexure P-8 dated 17.11.2020 pertaining to the petitioners qua recovery are hereby set aside.

The learned counsel for the petitioners has submitted that since there was an interim order passed by this Court, there was no recovery

effected from the petitioners and therefore, there is no need to pass any order with regard to refund of any amount.

Consequently, the present petition is disposed of.

21.02.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |