

220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:126179

CWP-30896-2018
DECIDED ON:06.07.2023

MEGRAM @ MEGHRAJ

.....PETITIONER

VERSUS

STATE OF HARYANA & ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vivek Kumar Thakur, Advocate for
the petitioner.

Mr. Padamkant Dwivedi, Advocate for
Mr. Vivek Chauhan, Advocate for respondent No.2 to 4.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of recovery affected from the salary of the Petitioner @ Rs.8000 Per Month w.e.f August 2016 i.e within one year of the retirement i.e 30.06.2017 and further writ of Mandamus directing the Respondent to release the amount recovered i.e 72,000/- along with interest and also to direct the Respondents to consider the Petitioner for the regular promotion for the post of ALM(Assistant Lineman) from the deemed date of his promotion i.e 31.07.1999 and release the consequential benefits.

2. The counsel for the Petitioner states that the petitioner was appointed on daily wages on 26.05.1981 and his services were regularised and was appointed as Regular Work Mate(RWM) in 1993. ON 30.07.1999, the petitioner was eligible for the promotion to the post of ALM and he was granted deemed promotion subject to the decision of some writ petition. On the basis of his 10 years service as deemed ALM, the petitioner was granted 1st ACP pay scale w.e.f 1.08.2009 vide order dated 20.09.2010 by respondent no.3 Superintending Engineer Operation Circle

UHBVN(Annexue P-1).

3. The counsel for the petitioner further avers that in the month of August 2016, the Respondent started making recovery from the salary of the petitioner @8000/- per month by giving the reason that the petitioner has to be granted ACP scale from 2012 instead of 2009 therefore the excess amount paid has to be recovered, but no formal order was passed by the respondent.

4. The counsel for the petitioner contends that the he was due to retire on 30.06.2017, therefore, submitted various applications to the respondent and also requested them to supply him information with regard to RTI but the same grievance was never taken into consideration by the respondent. The counsel for the petitioner further states that the matter was sent to the Account Department and the finding was received from the Chief Accounts Officer, UHBVN, Panchkula that the ACP from 1.08.2009 was rightly granted to the petitioner alongwith the deemed date of promotion.(Annexure P-2).

5. The counsel for the petitioner vehemently argues that as per the letter dated 30.03.2016 issued by the Managing Director, UHBVN Limited Panchkula mentions the instructions by the Government of Haryana (order dated 23.02.2016), which clearly states that the recovery cannot be made from the retired employee or an employee who is due to retire within 1 year of the order of the recovery. (Annexure P-3 and P-4). The counsel for the petitioner further states that despite above mentioned instructions, the excess amount was recovered after 7 years of granting 1st ACP.

6. On the other hand, the counsel for the respondent states that as per the order dated 6.05.2002 by respondent-3 , there was no clause for back date promotion or deemed date promotion. The counsel for the respondent further states that the deemed date the petitioner for promotion as ALM was only meant for re-fixation of seniority and notional pay fixation of the petitioner in the pay scale of ALM was made w.e.f 30.07.1999.(Annexure R-1).

7. The counsel for the Respondent contends that the respondent no. 3 i.e S.E(Op) Circle UHBVN, Sonipat vide order dated 20.09.2010 wrongly allowed 1st ACP to the petitioner w.e.f 01.08.2009 considering his deemed date of promotion as ALM from 30.07.1999 instead of actual joining as ALM on 14.05.2002. The counsel for the respondent further contends that the 1st ACP was granted provisionally subject to the verification by the CAO/PAY FIXATION, UHBVN, PANCHKULA and later the AO/PAY FIXATION C/o CAO, UHBVN, PANCHKULA made the observation vide his memo No. 16553/CAO/PF dated 30.08.2016 that the 1st ACP given to the petitioner w.e.f 1.08.2009 is not correct as the official was actually promoted as ALM w.e.f 14.05.2002 and in view of that respondent no. 3 sanctioned revised 1st ACP to the petitioner w.e.f 1.06.2012 vide order dated 27.06.2017 in supersession to the earlier office order.(Annexure R-2).

8. The counsel for the respondent vehemently argues that the excess payment has been recovered in installments from the petitioner from his salary paid for the months of December 2016 to May 2017. The respondent counsel further states that no representation made by the petitioner against the recovery of excess amount has been found in the office records. The respondent counsel contends that the policy instructions issued by the Government of Haryana dated 23.02.2016 have been adopted by the respondents vide letter dated 30.06.2016, however the petitioner is not covered in the above stated instructions due to the fact that the petitioner had submitted his undertaking and representation for the 1st ACP under ACP rules vide the office order no-8/Finance dated 20.02.2004 as under:-

“The pay which is fixed in the revised pay scales by the Drawing & Disbursing Officers would be provisional till the same is verified by the CAO(Pay Fixation).In case any over payment has been made due to wrong pay fixation to any employee, the same would be recoverable from the employee concerned without observing any usual formalities.”

9. After having gone through the submissions made by learned counsel for the respective parties, the court is of the opinion that the petitioner was granted 1st ACP erroneously and the petitioner was also aware of the fact that as per his undertaking of ACP rules vide order dated 20.02.2004, he was not eligible for 1st ACP granted vide order dated 1.08.2009 whereas he was actually promoted as ALM on 06.05.2002. This court relying upon the judgment of Apex Court passed in ***Thomas Danel Versus State of Kerala & Ors. 2022 (SC) 438*** wherein it has been held:-

“ 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. ”

10. Having regard to the above, the difference of excess payment of salary paid to the petitioner comes out to be 71889/- and an attempt to recover the said amount after passage of seven years of granting the same erroneously, is justified.

11. In result, the appeal being devoid of merits stands dismissed without any costs.

(SANDEEP MOUDGIL)
JUDGE

06.07.2023

Meenu

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