

CWP-797-2017

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

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Judgment reserved on: 11.01.2023

Pronounced on: 18.01.2023

Dharamvir Singh Dahiya

...Petitioner

Versus

Bhagat Phool Singh Mahila Vishwa Vidyalya, Khanpur Kalan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. R.K.Malik, Sr. Advocate with
Mr. Sachmeet Singh Randhawa, Advocate,
for the petitioner.

Mr. Deepak Kundu, Advocate,
for respondents No.1 and 2.

Mr. Rohit Arya, DAG, Haryana.

Mr. Jangjit Singh Dahiya, Advocate,
for respondent No.7.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present writ petition is to the decision dated 30.12.2016 (Annexure P-17) of the Executive Council, vide which an amount of Rs.30,02,685/- was ordered to be recovered from the salary/retiral benefits of the petitioner.

Learned Senior Counsel for the petitioner has contended that the petitioner was appointed as a Lecturer in Library Science in Mahila Polytechnic Kanya Gurukul, Khanpur Kalan, Sonapat; that the petitioner went on deputation w.e.f. 31.08.1988 to 30.04.1993 in Jawahar Navodaya Vidyalaya, but his lien had been retained in the parent institution for a

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period of two years, which extended from time to time; that the petitioner was repatriated and joined back in BPS Mahila Polytechnic, on 01.05.1993, and that the petitioner was promoted to the post of Senior Lecturer w.e.f. 01.05.1993, and further Head of the Department w.e.f. 16.07.1996 and had continued as such, till his retirement.

Learned Senior Counsel has further contended that the petitioner was issued a show cause notice dated 22.01.2016 on the ground that his promotions as Senior Lecturer and Head of the Department were not legal and as to why recovery of the benefits accrued from the said posts, should not be effected from him; that in response thereof, the petitioner had submitted a detailed reply dated 03.05.2016 (Annexure P-15), but the Executive Council in its meeting held on 30.12.2016, declared that respondent No.7 was senior to the petitioner and had illegally decided to recover Rs.30,02,685/- from the petitioner.

Learned Senior Counsel has further contended that the petitioner had rendered services as a Senior Lecturer w.e.f. 01.05.1993 upto 15.07.1996 and Head of the Department w.e.f. 16.07.1996 till his retirement i.e. 31.05.2017 and, therefore, had drawn the salary meant for the aforesaid posts, and that as the petitioner had actually rendered the services against the posts held and, therefore, no recovery could be effected from him. Learned Senior Counsel further submitted that no recovery can be effected from retired employees, or employees who were due to retire within one year even as per the order of recovery, and that admittedly, the petitioner was retired on 31.05.2017 whereas recovery of the aforesaid amount was ordered to be effected from him, vide decision dated

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30.12.2016 (Annexure P-17). In support of his contentions, learned Senior Counsel has relied upon the judgment rendered by the Hon'ble Apex Court in State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc., 2015 AIR (SC) 696.

Learned Senior Counsel for the petitioner has further contended that while declaring respondent No.7 as senior to the petitioner, he was not associated by the Committee and, therefore, the aforesaid decision was contrary to the principles of natural justice. He yet further submitted that as the petitioner and respondent No.7 have since retired from the service and, therefore, he does not press for the claim of seniority. Learned Senior Counsel has further contended that the petitioner was having requisite experience and, therefore, he was rightly promoted to the posts of Senior Lecturer and then the Head of the Department. For the sake of arguments, if it is assumed that the petitioner had not been promoted and remained as Lecturer, even then his salary would have been the same.

On the other hand, learned counsel for respondents No.1 and 2 has contended that the excess amount of salary paid to the petitioner had rightly been sought to be recovered from him. He has further submitted that the petitioner was appointed Lecturer in the Department of Library Science in the Mahila Polytechnic, on 15.07.1984 and he was paid fixed monthly salary of Rs.900/- till he proceeded on deputation; that the petitioner remained on deputation as Librarian in Navodya Vidyalaya Samiti, w.e.f.12.09.1988 to 30.04.1993, in the pay scale of Rs.1400-2600/-; that the Mahila polytechnic was taken over as a grant-in-aid institution by the State Government under its Technical Education

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Department, w.e.f. 01.04.1989, and at that time, the petitioner was not working in the Institute; that the petitioner had given application dated 30.04.1993 to the Principal of Mahila Polytechnic, seeking permission to join duty w.e.f. 01.05.1993 as Lecturer in the Library Science, which had been allowed by the then President of the then Education Society without permission of the competent authority and the petitioner had been allowed to join as Lecturer and paid monthly salary of Rs.4030/- in the running grade and that too without approval of the Government. It is further submitted that at that time, the petitioner submitted an affidavit dated 17.05.1993 that in case, the competent authority did not accept his grade pay of Lecturer, he would refund the excess amount paid to him by the Mahila Polytechnic. Learned counsel has further contended that the Government, however, treating the petitioner as a fresh appointee in the Mahila Polytechnic w.e.f. 01.05.1993, had not accepted the running grade of Lecturer for him and accordingly, his pay had been fixed at the initial pay of Rs.2200/- in the scale of Rs.2200-4000, w.e.f. 01.05.1993; that the petitioner had challenged the fixation of his pay through CWP-13151-1995, by counting the previous services rendered by him in the Institute w.e.f. 15.07.1984 and also the period of his deputation; that during pendency of the said petition, the Board of Governors (BOG) of the Polytechnic in its meeting dated 12.01.1996 passed a resolution, promoting the petitioner as a Senior Lecturer in Library and Information Science Department from 01.05.1993, subject to the decision of the pending case and that in another meeting of the BOG of Polytechnic, held on 23.12.1996, the petitioner was further promoted as Head of the Department in Library and Information

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Science. While drawing the attention of this Court to the fact that the petitioner himself was part of the BOG, which had granted him promotion as Head of the Department. It is also contended that the said promotion is totally illegal, and that the petitioner did not have the requisite teaching experience of eight years for the promotion of Senior Lecturer and twelve years for further promotion as Head of the Department. As such, the aforesaid benefits given to the petitioner were in violation of the Haryana Technical Education Department (Group-A) Service Rules, 1986.

Learned counsel for respondents No.1 and 2 has further contended that respondent No.1 was established on 18.08.2006 and all the institutions including BPS Mahila Polytechnic, Khanpur Kalan, were taken over by respondent No.1-University. He has further contended that on account of non-approval of the promotions, the then Management of the Polytechnic had issued the order dated 17.06.2022 for recovery of the excess amount paid to the petitioner on the promoted posts; that the petitioner challenged the aforesaid order dated 17.06.2022 by filing CWP-9464-2022, wherein vide order dated 20.06.2002, operation of the aforesaid order had been stayed, and that during pendency of aforesaid writ petitions, the ACP scale of Rs.15600-39100+8000 G.P., was provisionally granted to the petitioner, subject to filing of an affidavit that in case CWP-9464-2022 was dismissed, he would repay the excess amount received as a result of grant of ACP. It is further submitted that in CWP-9464-2002, the petitioner had given up challenge to the order/action declaring his promotion(s) to the posts of Senior Lecturer and the Head of the Department, as illegal and he had only challenged the recovery notices

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issued to him; that resultantly, the aforesaid petition was allowed, vide order dated 08.07.2015, to the extent that no recovery could be made from the petitioner without issuing him a show cause notice, and that vide order dated 08.07.2015, CWP-13151-1995 filed by the petitioner, was dismissed as withdrawn. It is further contended that in pursuance of the order dated 08.07.2015, and following the due procedure, a show notice dated 22.01.2016 (Annexure P-14) was issued to the petitioner, and after hearing the petitioner, respondent No.2-Executive Council had ordered for recovery of the excess amount from the salary/retiral benefits of the petitioner.

In addition to the arguments of learned counsel for respondents No.1 and 2, learned counsel for respondent No.7 has submitted that aforesaid promotions were done by the petitioner himself being Officiating Principal as Member Secretary of the BOG and that the petitioner had concealed these material facts from the Court, and that moreover, case of the petitioner for promotion was neither recommended by the Departmental Promotion Committee nor approved by the Government. He has further contended that the promotions were obtained by the petitioner by manipulations and that the petitioner did not have the requisite qualifications for the post of Lecturer. **In support of his contentions, learned counsel for respondent No.7 has relied upon the judgments rendered by the Hon'ble Supreme Court in 'High Court of Punjab and Haryana and others Vs. Jagdev Singh' 2016 AIR (Supreme Court) 3523, and 'State of Himachal Pradesh & Ors. Vs. Rajesh Kumar' Special Leave to Appeal No.17914/2022, decided on 31.10.2022.**

I have heard the learned counsel for the parties.

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Challenge is to the order dated 30.12.2016 (Annexure P-17) (item No.25) passed by the Executive Council, vide which an amount of Rs.30,02,658/- is sought to be recovered from the salary/retiral benefits of the petitioner and (item No.26) vide which respondent No.7 was declared senior to the petitioner.

As noticed above, learned Senior Counsel did not press the seniority dispute between the petitioner and respondent No.7 for the reason the question of seniority does not arise at this stage owing to their retirement from service.

The Executive Council, vide decision dated 30.12.2016, ordered to recover Rs.30,02,658/- from the petitioner in view of the directions of the Director General, Technical Education.

The petitioner filed CWP-9464-2002 challenging the recovery notice and the recovery relating to the salary which the petitioner had earned as Senior Lecturer and as Head of the Department. Since no show cause notice or any opportunity was afforded to the petitioner for hearing, the aforesaid writ petition was allowed on 08.07.2015 to the extent that no recovery can be made from the petitioner without issuing him a show cause notice and without seeking his defence.

In the case in hand, the petitioner was promoted as Senior Lecturer w.e.f. 01.05.1993 and performed the duties upto 15.07.1996. Thereafter, he was promoted as Head of the Department on 16.07.1996 and retired on 31.05.2017. As a matter of fact, the petitioner had performed his duties on the posts occupied by him. The petitioner was entitled to the salary for the services rendered by him. The orders promoting the petitioner

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from time to time, were not challenged at any stage. The Executive Council took the decision of recovery in the meeting held on 30.12.2016 and recovery notice was issued to him on 10.01.2017. The petitioner retired on 31.05.2017. The Executive Council took the decision to effect recovery of excess amount from the petitioner due to wrong promotions, which as noticed above, had never been challenged at any stage. Even otherwise, the case of the petitioner is covered by the law laid down by the Hon'ble Supreme Court in Rafiq Masih (supra), 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.”*

Indisputably, the petitioner was served notice for recovery on

10.01.2017, when the earlier writ petition preferred by the petitioner was

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allowed and the directions were issued for granting an opportunity of hearing to the petitioner, who retired on 31.05.2017.

The disputed payment has not been made to the petitioner mistakenly, and rather on his being promoted, he had worked on the said posts. It is not the case of the management that the salary given to the petitioner was not in lieu of the duties performed or posts held by him. Having remained silent in respect of the alleged illegal/promotion granted/obtained by the petitioner, respondents No.1 and 2 cannot be allowed to rake up the said issue in the present petition, wherein the limited issue is only regarding the recovery sought to be made from the petitioner.

In view of the above, the present petition is allowed. The decision dated 30.12.2016 (Annexure P-17) of the Executive Council, is set aside.

18.01.2023

parveen kumar

(HARNARESH SINGH GILL)

JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No