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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 11th April, 2023*

\+ W.P.(C) 3766/2007 with CM APPLs. 7075/2007, 1834/2008, 2463/2008, 3826/2008, 11490/2008, 51991/2022

SANJAY SHARMA ..... Petitioner
Through: Mr. Subhro Sanyal, Advocate

versus

STATE OF PUNJAB & ORS. ..... Respondents
Through: Ms. Supriya Manan, AAG for R-1/ State of Punjab (M:9810588874,email:supriyamanan.law@gmail.com)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed challenging the office order dated 26.04.2007 issued by the Principal Resident Commissioner, Punjab Government, Punjab Bhawan, New Delhi by which the office order dated 20.01.2005 was withdrawn. Earlier, by office order dated 20.01.2005, the petitioner had been granted a higher pay scale of Rs. 12,000 – 16,350/-. Subsequently, by the impugned office order dated 26.04.2007, the aforesaid higher pay scale granted to the petitioner was withdrawn. Further, the petitioner has also challenged the notice dated 13.04.2007 issued by the respondent for withdrawal of the higher pay scale as aforesaid. The petitioner is also aggrieved by the decision dated 26.02.2007 of the respondent by

which the petitioner was intimated that the office order dated 20.01.2005 has been withdrawn.

2. The facts of the case are that the petitioner joined the services of the respondent in the year 1984 on the post of reception-cum-hospitality officer of Punjab Bhawan, New Delhi. The petitioner worked on the said post for more than 18 years and was getting the pay scale of Rs. 7,880-13,500/-, with initial start of Rs.8,000/-.

3. The petitioner was appointed to the post of General Manager, Punjab Bhawan vide office order dated 15.04.2002 issued by the Principal Secretary to Government of Punjab, Department of General Administration, Punjab Civil Secretariat, Chandigarh. In the said order it was mentioned that such arrangement shall continue till an officer of Indian Administrative Service (IAS)/Punjab Civil Service (PCS) was appointed on regular basis. It is the case of the petitioner that by subsequent order dated 21.05.2002, the stipulation that the arrangement will continue only till an IAS/PCS Officer is appointed on regular basis was deleted. The petitioner was, thus, promoted to the post of General Manager on his existing pay scale, i.e., Rs. 7,880-13,500/-, with an initial start of Rs. 8000/-.

4. It is the case of the petitioner that by order dated 13.11.2002 issued on 14.11.2002, the Principal Secretary, Department of General Administration, Punjab Civil Secretariat, Chandigarh, accorded sanction to the creation of 1 post of General Manager, Punjab Bhawan, New Delhi. The said post of General Manager was created with the concurrence of Finance Department, duly conveyed by order dated 20.09.2002. Thus, it is submitted that the petitioner joined the

post of General Manager and shouldered higher responsibilities.

5. The petitioner continued to work on the post of General Manager on the scale of Rs. 7,880-13,500/- in the office of the Principal Resident Commissioner, Punjab Government, Punjab Bhawan, New Delhi. It is the contention of the petitioner that the Punjab Government vide its letter dated 14.07.1998 had fixed the revised scale for the post of General Manager as Rs.12,000-16,350/-. Hence, petitioner filed representation on 05.01.2005 before the Principal Resident Commissioner with request to be granted the scale admissible to the post of General Manager, in terms of letter dated 14.07.1998 of the Punjab Government.

6. It is the case of the petitioner that vide order dated 25.03.2003, the Chief Secretary to Government of Punjab, Punjab Civil Secretariat, Chandigarh had delegated the financial and administrative jurisdiction of the Chief Secretary as Administrative Secretary to the Principal Resident Commissioner. Thus, the Principal Resident Commissioner was vested with the power of Chief Secretary as per order dated 24.03.2003 issued by Chief Secretary to Government of Punjab, Punjab Civil Secretariat, Chandigarh.

7. Thus, it is contended that the Principal Resident Commissioner, Punjab Bhawan, Punjab Government, New Delhi forwarded a note dated 17.01.2005 for issuance of an order to the effect that the petitioner be given pay scale of Rs. 12000-16350/- without any delay. Subsequently, approval was also sought from the Chief Minister of Punjab, which was duly granted. After approval of the Chief Minister of Punjab, the Principal Resident Commissioner, Department of

General Administration, Punjab Bhawan, New Delhi issued an order dated 20.01.2005 for grant of pay scale of General Manager to the petitioner.

8. It is the case of the petitioner that the post of General Manager carried a pay scale of Rs.12000-16,350/-, qua which no objection was raised by the Finance Department. Thus, the petitioner continued to work on the post of General Manager on the pay scale of Rs. 12000-16,350/-.

9. Subsequently, the internal audit report of Finance Department raised an objection to enable the Department to regularize the scale of Rs. 12000-16350 granted to the petitioner after seeking concurrence of the Finance Department. Accordingly, letter dated 23.02.2006 was sent to the Secretary to Government of Punjab, Department of Finance by Deputy Resident Commissioner with request to seek ex post-facto approval to the pay scale granted to the petitioner, i.e., Rs. 12000-16350 from the date of his joining the post of General Manager, i.e., 16.04.2002.

10. Subsequently, petitioner received notice dated 13.04.2007, issued by the Principal Resident Commissioner, Punjab Bhawan, New Delhi for examining the proposal for upward revision of his pay scale, afresh. Petitioner submitted his reply dated 20.04.2007 to the said notice. Pursuant to the aforesaid notice, the Principal Resident Commissioner, Punjab Bhawan, New Delhi issued an office order dated 26.04.2007 thereby withdrawing the office order dated 20.01.2005 by which the petitioner had been granted higher pay scale. Thereafter, by order dated 24.01.2008, the respondents re-fixed the

pay scale of the petitioner at Rs. 7,880-11,660/-, instead of the higher pay scale of Rs.12000-16,350/-.

11. Afterwards, a notice dated 07.03.2008 was issued to the petitioner seeking to recover the amounts that had been paid to the petitioner on account of the placement of the petitioner in the pay scale of Rs. 12000-16,350/- which had been withdrawn by letter dated 26.04.2007 issued by the respondent, thereby placing the petitioner in the original pay scale of Rs. 7,880-11,660/- w.e.f. 01.01.1996, to which the petitioner was initially appointed.

12. It is contended on behalf of the petitioner that the order dated 26.04.2007 issued by the Principal Resident Commissioner, Punjab Bhawan, New Delhi is bad, mechanical, non-speaking and in violation of the principles of natural justice. It is further contended that the orders dated 24.01.2008 and 02.07.2008 and notice dated 07.03.2008 are bad in law. It is submitted that the respondents were taking the work of General Manager from the petitioner and accordingly the petitioner was entitled to receive the remuneration payable to the General Manager.

13. It is submitted that the petitioner has been granted the pay scale admissible to the post of General Manager since the petitioner was holding the said post of General Manager and performing the duties of General Manager. Since the petitioner had performed his duties on the post of General Manager, he ought to be granted pay scale admissible to the said post.

14. In support of his submissions, ld. Counsel for the petitioner has relied upon the following judgments:

i) *K.I. Shephard and Others Vs. Union of India and Others, (1987) 4 SCC 431*

ii) *Shekhar Ghosh Vs. Union of India and Another, (2007) 1 SCC 331*

iii) *Syed Abdul Qadir and Others Vs. State of Bihar and Others, (2009) 3 SCC 475*

iv) *State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334*

v) *Thomas Daniel Vs. State of Kerala & Ors., Civil Appeal No. 7115/2010*

15. On the other hand, on behalf of the respondents it is submitted that the petitioner had joined the service as Reception-cum-Hospitality Officer in Punjab Bhawan, New Delhi in 1984. His pay scale was of Rs. 825-1700/-, that of Class II officer. On the basis of conversion formula, his pay scale was revised to Rs. 7220-11,660/- vide notification dated 16.01.1998.

16. It is submitted on behalf of the respondent that the petitioner was appointed to the post of General Manger, Punjab Bhawan vide office order dated 15.04.2002. It is submitted that appointment was to a temporary post and in his own pay scale. Thus, it is submitted that appointment of petitioner to the post of General Manager, which was a Class I officer rank, did not change the pay grade of the petitioner. It is submitted that the petitioner was to be paid according to Class II officer rank.

17. It is the case on behalf of the respondent that on 14.11.2002, vide an order of the Governor of Punjab, a temporary post of General

Manager was created in the Punjab Bhawan. It is submitted that pay scale revision was done in order to create a temporary post of General Manager and it did not entitle the petitioner to be equated to Class I officer.

18. It is the contention on behalf of the respondent that the petitioner represented on 05.01.2005 to the Principal Resident Commissioner that he should be paid as per the pay scale attached with the post of General Manager, i.e., the revise pay scale of Rs. 12000-16,350/-. However, the basis of the said representation was a government circular issued for filling up the post of General Manager from Class I officers. It is submitted that on the basis of the said representation, the then Principal Resident Commissioner had obtained the approval of the then Minister in charge to give a pay scale of Rs. 12000-16,350/- to the petitioner. However, the petitioner did not take the approval of the Finance Department for the said higher pay scale as was mandatory under the Punjab Government Rules.

19. It is further submitted that the post of General Manager in Punjab Bhawan, New Delhi was a temporary one and the same was within the knowledge of the petitioner, as is evident from the request letter written by the petitioner as General Manager to the Government of Punjab on 08.02.2005. During the course of audit in the year 2005, the irregularities attached to the salary enhancement of the petitioner was taken note of by the auditors. Consequently, the Government of Punjab issued an order dated 26.02.2007 to withdraw the salary enhancement of the petitioner and take a look at the petitioner’s case

afresh.

20. It is submitted that the petitioner was provided an opportunity of presenting his case vide notice dated 13.04.2007. However, the petitioner could not come up with a compelling reason for the said enhancement. Thus, vide order dated 24.01.2008, the earlier office order for enhancement was withdrawn and the pay scale of the petitioner was re-fixed. It is submitted that the petitioner was not only the General Manager, but also the Drawing and Disbursing Officer (DDO) at the time. He misused his official position and used undue advantage for his personal gain. Hence, the balance from the higher salary paid to the petitioner was recovered by the Finance Department.

21. It is further submitted that the petitioner was drawing salary on the pay scale of Class I officer but he was appointed as Class II officer and that his appointment was temporary. It is further submitted that the respondents have a right to recover the excess amount paid to the petitioner, especially as the recovery and fixation of wrong pay scale was brought to the notice of the petitioner during his service tenure itself.

22. It is further submitted that the present petitioner has become infructuous as the amount due towards the petitioner has already been recovered by the respondents.

23. On behalf of the respondents, reliance is placed on the following judgments:

I. *Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others.,* reported as *(2012) 8 SCC 417*

II. *Jayabrata Bose Vs. Union of India, (2022) 1 HCC (Del) 197*

24. I have heard the ld. Counsels for the parties and have perused the record.

25. Petitioner was appointed to the post of General Manager vide office order dated 15.04.2002 issued by the Government of Punjab, which reads as under:

> *"Shri Sanjay Sharma, Reception-cum-Hospitality Officer, Punjab Bhawan, New Delhi is appointed as General Manager, Punjab Bhawan, New Delhi in his own pay scale against the vacant post of General Manager. This arrangement will continue till an IAS/PCS Officer is appointed on regular basis.*
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> *This order is being issued with the approval of the Chief Secretary."*

26. Subsequently, vide order dated 21.05.2002, the appointment of the petitioner was modified as follows:

> *"In the order dated the 15th April 2022, issued vide Endst.No.12/16/2001-Estt-IV(3) 5694 Dated 16th April, 2002 by the Department of General Administration regarding appointment of Shri Sanjay Sharma as General Manager, Punjab Bhawan, New Delhi, the words "This arrangement will continue till an IAS/PCS Officer is appointed on regular basis" are hereby deleted."*

27. Thus, perusal of the aforesaid shows that the petitioner herein was appointed as General Manager, Punjab Bhawan, with a clear stipulation that he was being appointed in his own pay scale.

28. As per the documents on record, in the year 2002, vide order dated 20.09.2002 issued by the Government of Punjab, a temporary

post of General Manager, Punjab Bhawan, New Delhi was created, in the pay scale of Rs. 7,880-13,500/-. Thus, office order dated 20.09.2002 issued by the Government of Punjab reads as under:

> *"* ***Government of Punjab***
> ***Department of General Administration***
> ***(Secretariat Establishment-I Br.)***
>
> ***Orders of the Governor of Punjab***
>
> *Sanction is hereby accorded to the creation of one temporary post of General Manager, Punjab Bhawan, New Delhi in the pay scale of Rs.7880-13500 (with initial start of Rs.8000/-) plus Rs.1000/- special allowance from 15.04.2022 to 28.02.2003 in the Secretariat Cadre after taking one post of PCS out of the PCS cadre.*
> *2. The incumbent of the post will be entitled to such other allowances as may be admissible to him under the Rules framed from time to time.*
> *3. The expenditure will be met from the Budget provisions under major Head "2052-Secretariat Genereal Service-091-attached offices" for the year 2002-2003.*
> *4. This issues with the concurrence of the Department of Finance conveyed vide their I.D. No.13/106/2002-37EI/2665, dated 20.09.2002."*

29. It is pertinent to mention here that the petitioner was already working to the said pay scale of Rs. 7,880-13,500/-, at the time when the aforesaid office order dated 20.09.2002 was passed for creation of a temporary post of General Manager in Punjab Bhawan, New Delhi in the said pay scale of Rs. 7,880-13,500/-. Thus, it is clear that the aforesaid office order dated 20.09.2002 was issued by the respondent in order to create a temporary post of General Manager in order to

adjust the petitioner to the said specially created post of General Manager.

30. Thus, it is clear from the aforesaid that the post of General Manger that was created in Punjab Bhawan in the year 2002, was a special post that had been created temporarily in the pay scale of Rs. 7,880-13,500/-. The office order dated 20.09.2002, as reproduced hereinabove is very categorical in this regard. Further, the office order dated 15.04.2002 by which the petitioner herein was appointed, also very clearly stipulated that the petitioner was appointed in his own pay scale. Thus, the petitioner was aware since the beginning that the post to which he was being appointed, was a specially created temporary post and was not comparable with the regular post of General Manager, which was on a higher pay scale and to which incumbents who belonged to Indian Administrative Service (IAS) and Punjab Civil Service (PCS) were appointed.

31. When the petitioner accepted his appointment to the post of General Manager in his own pay scale in a specially created temporary post, there was no question of the petitioner claiming a higher pay scale admissible to Class I post. Thus, payment of higher pay scale to the petitioner, without concurrence of the Finance Department was clearly inadmissible. Therefore, when the aforesaid illegality was discovered, the said was rightly set in order by the respondents.

32. The appointment of the petitioner to the post of General Manager was clearly as a measure of administrative exigency so that the work of Punjab Bhawan, New Delhi did not suffer. The petitioner knew that his appointment was to a specially created post to adjust

him to the said post and that he was not appointed to the regular post of General Manager per se. This fact becomes all the more clear by reference to office order dated 20.09.2002 issued by Government of Punjab. The said office order clearly states that the temporary post in pay-scale of Rs.7,880-13,500/- was created after taking one post out of Punjab Civil Service (PCS) cadre. Thus, the temporary post to which the petitioner was appointed was not of PCS cadre, which was a Class-I rank entailing a different pay-scale. The petitioner was never appointed to the post of General Manager in PCS cadre which had a different pay scale of Rs. 12000-16,350/-. He was appointed to a specially created post, which was temporary in nature, having pay-scale of Rs.7,880-13,500/-, which was rightly paid to the petitioner.

33. Thus, it is clear that the post of General Manager to which the petitioner was appointed, was different from the post of General Manager under the PCS cadre. Therefore, petitioner cannot claim a pay scale which was under the PCS cadre and to which the petitioner was neither appointed to nor was entitled to. Thus, when the petitioner accepted his appointment with open eyes in his own pay scale, there was no occasion for payment of any other higher pay scale to the petitioner.

34. In the present case, when the illegality was discovered, requisite order for recovery of the excess payment was made by the respondents during the period when the petitioner was still working. Thus, there was no impediment in recovery of the amount from the petitioner, as the order of recovery was issued when the petitioner was still in service.

35. Hon'ble Supreme Court in the case of *Chandi Prasad Uniyal* (Supra) has categorically held as follows:

> ***"13***. *We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.*
>
> ***14.*** *We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.*
>
> ***15.*** *We are, therefore, of the considered view that except*

few instances pointed out in Syed Abdul Qadir case [(2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] and in Col. B.J. Akkara case [(2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , the excess payment made due to wrong/irregular pay fixation can always be recovered."

36. In view of the law laid down by the Hon'ble Supreme Court in the aforesaid case, Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, has issued notification detailing the procedure to deal with the issue of wrongful/excess payments. Thus, the said notification reads as under:

"Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
Estt. (Pay-I) Section

Recovery / waiver of the wrongful / excess payments made to Government servants.

Department of Personnel & Training has issued instructions from time to time regarding recovery of wrongful / excess payments made to Government servants. The essence of these instructions has been summarized in the following paras for guidance and better understanding.

I. ***Supreme Court Judgments on the matter of recovery of excess payments:***

The issue of recovery of wrongful/excess payments made to Government servants was examined by the Department of Personnel & Training in consultation with the Department of Expenditure and the Department of Legal Affairs in the light of the following judgments of the Hon'ble Supreme Court:

(i) Chandi Prasad Uniyal and Ors Vs State Of Uttarakhand And

Ors, 2012 AIR SCW 4742, (2012) 8 SCC 417, decided on 17th August, 2012

(ii) State of Punjab & Ors Vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) decided on 18th December, 2014.

II Procedure to deal with the issue of wrongful/excess payments:

In view of the law declared by Courts and reiterated by the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal and Ors Vs State of Uttarakhand and Ors, 2012 AIR SCW 4742, (2012) 8 SCC 417, the Ministries/Departments were advised to deal with the issue of wrongful/excess payments as follows:

i. In all cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc. come to notice, immediate corrective action must be taken.

ii. In a case where the authorities decide to rectify an incorrect order, a showcause notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee.

iii. Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favoritism, negligence or, carelessness, etc., roles of those responsible for overpayments in such cases, and the employees who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.

iv. Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. No waiver *of recovery may be allowed without the approval of Department of Expenditure.*

v. *While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable installments with the approval of Secretary in the Ministry, in consultation with the Financial Adviser (FA).*

vi. *Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc. as in the case of Travelling Allowance (TA), interest would continue to be recovered from the employee as heretofore.*

[Para 3 of DoPT's OM No 18/26/2011-Estt (Pay-I) dated 06.02.2014]

III Situations wherein recoveries of wrongful/excess payments by the employers would be impermissible in law

Para II(iv) of the above instructions provides inter-alia that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. The issue was considered by the Hon'ble Supreme Court in the case of ***State of Punjab & Ors Vs Rafiq Masih (White Washer) etc. in CA No.11527 of 2014 {arising out of SLP(C) No.11684 of 2012}****. In this case, the Hon'ble Supreme Court observed that 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. The Hon'ble Supreme Court summarized 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.

IV Procedure to deal with wrongful/excess payments by the Administrative Ministry/ Departments

Ministries / Departments may deal with the issue of wrongful / excess payments made to Government servants accordingly. Wherever waiver of recovery in the abovementioned situations is considered, administrative Ministries/ Departments may process the same with the express approval of Department of Expenditure in terms of DoPT's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014.

[DoPT'sOM No. 18/03/2015-Estt (Pay-I) dated 02.03.2016]"

37. Perusal of the aforesaid clearly shows that it is in cases such as where the employees belong to Class III or Class IV service; or where recovery is sought to be made from retired employees or employees who are due to retire within one year or where the recovery from employees is sought to be made in cases where excess payment has been made for a period in excess of 5 years, that recovery shall not be made. However, in the present case, the petitioner was working to a Class II post and recovery was made during the course of his employment. Further, in the peculiar facts and circumstances of the present case, it is clear that the petitioner was appointed to a specially

created temporary post in his own pay scale. Thus, it is clear that the petitioner was not entitled to any higher pay scale and recoveries have rightly been made from the petitioner.

38. Even otherwise, the due amounts have already been recovered by the respondent from the petitioner.

39. In view of the aforesaid, the present writ petition is dismissed along with all the pending applications.

MINI PUSHKARNA, J

APRIL 11, 2023/au