IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.15902 of 2024
Date of decision: 26.12.2024

Sunil Kumar. ...Petitioner.

Versus

HRTC & Anr. ...Respondents.

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?

For the petitioner : Mr. R.K. Dogra, Advocate.
For the respondent : Mr. Raman Jamalta, Advocate.

Jyotsna Rewal Dua, Judge

Notice. Mr. Raman Jamalta, Advocate appears and waives service of notice on behalf of the respondents. With the consent of learned counsel for the parties, matter is heard at this stage for disposal.

2. Petitioner is presently serving as Conductor in respondents-Corporation. His grievance is to the office order dated 29.11.2024 (Annexure P-3), in terms of which recovery of Rs.87,083/- has been ordered from him at the rate of Rs.5,000/- per month w.e.f. October, 2024 from his monthly salary.

Recovery is ordered on the ground that petitioner had been wrongly released benefit of Assured Career Progression

Scheme on completion of 14 years' service w.e.f. 01.10.2017. That the petitioner was not entitled for this benefit under the ACP Scheme.

3. The contention of the petitioner is that he is a Class-III employee and had no role in the release of benefits granted to him under the ACP Scheme with effect from 01.10.2017. Therefore, in view of law summed up in ***S.S. Chaudhary vs. State of H.P. & Ors.***[1], recovery cannot be effected from him.

It was also submitted that the impugned recovery order dated 29.11.2024 passed by the respondents violates the principles of natural justice as no notice was served upon the petitioner prior to issuing the recovery order.

4. In *S.S. Chaudhary's case (supra)*, the following conclusions were drawn:-

> *"35. In view of the aforesaid discussion, as held by Hon'ble Supreme Court in Rafiq Masih's case (supra), it is not possible to postulate all situations of hardship, where payments have mistakenly been made by the employer, yet in the following situations, recovery by the employer would be impermissible in law:-*
>
> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

[1]CWPOA No.3145 of 2019 decided along with connected matters on 24.03.2022.

(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.

(vi) Recovery on the basis of undertaking from the employees essentially has to be confined to ClassI/Group-A and Class-II/Group-B, but even then, the Court may be required to see whether the recovery would be iniquitous, harsh or arbitrary to such an extent, as would far overweigh the equitable balance of the employer's right to recover.

(vii) Recovery from the employees belonging to Class-III and Class-IV even on the basis of undertaking is impermissible.

(viii) The aforesaid categories of cases are by way of illustration and it may not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible gudielines or rigid formula and to give any exhaustive list of myriad kinds of cases. Therefore, each of such cases would be required to be decided on its own merit."

Taking note of above contentions of the learned counsel for the petitioner, this writ petition is disposed of with directions to the respondents to consider the case of the

petitioner in relation to his grievance against the impugned recovery order dated 29.11.2024 (Annexure P-3) in accordance with law and keeping in view the principles summed up in *S.S. Chaudhary's* case (*supra*) within six weeks. Till such time no further coercive action on the basis of impugned recovery order dated 29.11.2024 (Annexure P-3) be taken against the petitioner.

Pending miscellaneous application(s), if any, shall also to stand disposed of.

Jyotsna Rewal Dua
Judge

26th December, 2024
(Pardeep)