



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

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CWP-1167-2019

Date of decision : 25.11.2024

Rishi Lal Chauhan

.....Petitioner

V/S

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ivneet Singh Pabla, Advocate for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, setting aside the order dated 11.12.2013 (Annexure P-1), passed by respondent No.3, whereby pay of the petitioner has been re-fixed, annual increment has been withdrawn and recovery of Rs.1,24,872/- has been ordered to be effected from the petitioner and the order dated 26.04.2016 (Annexure P-3), passed by respondent No.3, whereby the petitioner has been granted the notional annual increment w.e.f. 01.07.2010. Further, seeking a writ of mandamus, directing the respondents to grant the 1st ACP scale to the petitioner w.e.f. 30.09.2012 i.e. the due date instead of 01.11.2015.

2. Brief facts, as have been pleaded in the petition, are that the petitioner joined the office of respondents as Junior Engineer on 15.07.1982. He was further promoted to the post of Sub Divisional

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Engineer (Horticulture) on 01.10.2007. As per Government notification dated 24.10.1996, all the Class II officers have to pass the departmental examination within a period of 03 years from the date of appointment/promotion. Respondent No.3 re-fixed the pay of the petitioner vide impugned order dated 11.12.2013 and a recovery of Rs.1,24,872/- was ordered to be made from the salary of the petitioner on the ground that the petitioner has not passed the departmental examination within 03 years of his promotion. The case of the petitioner is that after the promotion of the petitioner, the respondents failed to conduct departmental examination for Horticulture Wing till 25.08.2014 as no syllabus was provided by the Government. On 26.08.2014, the respondents have conducted the departmental examination, which was passed by the petitioner in the first attempt. Thereafter, respondent No.3 released the annual increment of the petitioner w.e.f. 01.07.2010 notionally vide order dated 26.04.2016. It is further the case of the petitioner that he was promoted as Sub Divisional Engineer (Horticulture) on 01.10.2007 and had completed 05 years' regular satisfactory service and he was required to be granted 1st ACP scale w.e.f. 30.09.2012 i.e. the due date, however, the same has been granted w.e.f. 01.11.2015. Thereafter, the petitioner has retired from service on 30.04.2018 on attaining the age of superannuation. The petitioner served a legal notice dated 16.07.2018 to the respondents for claiming the abovesaid benefits, which is still pending. Hence, this petition.

3. Pursuant to notice of motion, written statement on behalf of the respondents has been filed, wherein it has been stated as under :-



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“xx xx xx xx xx

3. *That the Govt. vide order dated 31.05.2019 has been granted the benefit of increment to the petitioner during 01.07.2010 to 01.07.2013 and accordingly the pay of the petitioner has been re-fixed vide office order No.268 dated 02.07.2019. The copy of the same is attached as Annexure R-1. Further the amount which was recovered from petitioner has also been paid to the petitioner vide bill no.149 dated 02.07.2019. The copy of the same is attached as Annexure R-2.*

4. *That the Govt. vide order dated 30.07.2019 has been granted the 1st ACP scale to the petitioner w.e.f. 30.09.2012 and increments of 01.07.2014 and 01.07.2015. Accordingly, the pay of the petitioner has been re-fixed vide office order no.466 dated 06.11.2019 and the benefit of 1st ACP and increments have been given to the petitioner vide bill no.292 dated 07.11.2019. The copy of the same are enclosed as Annexure R-3 & Annexure R-4 colly.*

xx xx xx xx xx”

4. Learned counsel for the petitioner submits that although all the benefits claimed by the petitioner in the present petition have been released by the respondents, however, the amount of Rs.1,24,872/- recovered from the petitioner has been refunded to him on 02.07.2019 without any interest. Since the said amount has been wrongly recovered by the respondents, therefore, the petitioner is entitled for interest on the same.

5. Per contra, learned State counsel, while referring to the averments made in the written statement, submits that since during the pendency of the present petition, all the benefits claimed by the

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petitioner have been granted to him, therefore, the instant petition has been rendered infructuous.

6. Admittedly, all the benefits claimed by the petitioner have been granted to him during the pendency of the present petition. However, an amount of Rs.1,24,872/- which was recovered from the petitioner vide order dated 11.12.2013 on the ground that he has not passed the departmental examination, has been refunded to him on 02.07.2019 without any interest. The said amount has been recovered by the respondents without any fault of the petitioner as the respondents failed to conduct departmental examination till 25.08.2014 and when on 26.08.2014, the departmental examination was conducted, the same has been passed by the petitioner in the first attempt. The action of the respondents is totally contrary to the law laid down by the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195***. The relevant portion of the aforesaid judgment is reproduced 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.”*

7. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by the principles and parameters laid down in Clause (v) of para 12 of the judgment of Hon’ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***.

8. Since, the amount in question, which was recovered from the petitioner, has been refunded to him by the respondent-department at its own end, however, without any interest, so there was no fault on the part of the petitioner in the alleged recovery, therefore, the respondents are directed to pay interest @ 7% per annum on the recovered amount of Rs.1,24,872/- from the date of deduction till the date of refund, within a period of 02 months from the date of receipt of certified copy of this order.

9. Disposed of in the above terms.

25.11.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No