



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

235 Date of decision : 15.10.2024

(i) CWP-4212-2021

Harjit Singh and othersPetitioners

V/S

State of Punjab and others ...Respondents

(ii) CWP-10593-2021

Harpreet SinghPetitioner

V/S

State of Punjab and others ...Respondents

(iii) CWP-8055-2021

Surinder Pal Singh and othersPetitioners

V/S

State of Punjab and others ...Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Shashank Vardaan Sharma, Advocate and
Mr. Damanpreet Singh, Advocate for the petitioner(s).

Mr. Teevar Sharma, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. This judgment shall dispose of all the above-said writ petitions, as common question of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CWP No.4212-2021, titled as ‘Harjit Singh and others Vs. State of Punjab and others’.



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2. The petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, quashing the orders dated 15.01.2021, 24.12.2020, 13.01.2021, 27.10.2021, 31.12.2020, 31.12.2020 and 24.12.2020 (Annexures P-18 to P-24), whereby pay of the petitioners has been ordered to be refixed and orders dated 30.12.2020, 15.01.2021, 06.01.2021, 11.01.2021 and 14.01.2021 (Annexures P-26 to P-33), whereby recovery has been ordered to be effected from the petitioners.

3. Learned counsel for the petitioners confined their claim with regard to recovery proceedings only as recorded in the order dated 03.03.2021, whereby recovery from the petitioners was ordered to be stayed.

4. Brief facts of the case, as have been pleaded in the present petition, are that petitioners No.1, 2, 4, 5 and 7 were appointed as Clerk vide orders dated 02.05.2005, 17.08.2004, 02.05.2005, 02.05.2005 and 03.06.2005, respectively, whereas petitioners No.3 and 6 were promoted to the post of Clerk vide orders dated 01.04.2005 and 14.01.2005, respectively and all the petitioners were further designated as Junior Assistant vide order dated 19.01.2011. Thereafter, vide order dated 09.11.2020, show cause notice was issued by respondent No.3 to the petitioners for reverting them back as Clerk from Junior Assistant. The said show cause notice was replied by the petitioners. However, vide order dated 27.11.2020 passed by respondent No.3, the petitioners were reverted back from Junior Assistant to Clerk w.e.f. 19.01.2011.

Thereafter, orders dated 15.01.2021, 24.12.2020, 13.01.2021,



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27.10.2021, 31.12.2020, 31.12.2020 and 24.12.2020 were issued for refixation of pay of the petitioners and orders dated 30.12.2020, 15.01.2021, 06.01.2021, 11.01.2021 and 14.01.2021 were issued regarding withholding the salary of the petitioners and effecting recovery from them. Hence this petition.

5. Learned counsel for the petitioners submits that the orders of recovery have been passed in violation of the law laid down in judgment of the Hon'ble Supreme Court passed in *State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195*.

6. On the other hand, learned State counsel, while referring to the averments made in the reply, submits that the petitioners were designated as Junior Assistant vide order dated 19.01.2011 and they were getting higher emoluments while working as Junior Assistant. Since, vide order dated 27.11.2020, the petitioners were reverted to the post of Clerk from Junior Assistant w.e.f. 19.01.2011, therefore, the excess amount paid to the petitioners is liable to be recovered from them.

7. I have heard learned counsel for the parties and perused the relevant documents.

8. Admittedly, the petitioners were designated as Junior Assistant vide order dated 19.01.2011. Thereafter, show cause notice dated 09.11.2020 was issued to the petitioners for reverting them back as Clerk from Junior Assistant and vide order dated 27.11.2020 passed by respondent No.3, the petitioners were reverted back from Junior Assistant to Clerk w.e.f. 19.01.2011. The stand taken by the respondents



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is that since the petitioners were reverted back from Junior Assistant to Clerk, therefore, the excess payments made to them, when they were working as Junior Assistant till 27.11.2020, are liable to be recovered from them.

9. Once the petitioners have performed their duties on the post of Junior Assistant, the amount paid cannot be recovered. The facts and circumstances of the present case suggests that it is not the case of the respondents that it was due to some fraud or misrepresentation of the petitioners that they were granted excess payment but it was granted by the respondents on their own on their re-designation as Junior Assistant. Even if an excess amount was paid to the petitioners, the same cannot be recovered from them. The action of the respondents is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (Supra)***. 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.”

10. In view of the above, this Court is of the considered view that the case of the present petitioners is squarely covered by Clauses (i), (iii) and (iv) of para 12 of the judgment of Hon’ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***. Consequently, the impugned orders of recovery are hereby quashed and set aside.

11. In case any amount has already been recovered from the petitioners, the respondents are directed to refund the same, within a period of 03 months from the date of receipt of certified copy of this order, along with interest @ 6% per annum from the date the same was recovered from the petitioners till its actual payment.

12. All the petitions are disposed of in the above terms.

15.10.2024
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No