



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

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CWP-13973-2003

Date of decision : 21.11.2024

Suresh Kumar and another

....Petitioners

V/S

State of Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Madan Pal, Advocate for the petitioners.

Mr. Ravi Dutt Sharma, D.A.G., Haryana.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has invoked the writ jurisdiction of this Court by filing the instant petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the impugned orders dated 06.08.2003 (Annexures P-3 and P-4), whereby the benefit of additional increment w.e.f. 01.07.1992/18.07.1993 and H.S.S. Scale w.e.f. 01.01.1994 granted to the petitioners by counting their apprentice service has been withdrawn.

2. The brief facts, as have been pleaded in the petition, are that petitioner No.1 joined as apprentice Signaler on 09.07.1983 and he became Signaler on 19.07.1983. Similarly, petitioner No.2 joined as apprentice Signaler on 18.07.1983 and became Signaler on 01.07.1985. Their services were regularized w.e.f. 01.11.1986. The Government of Haryana issued policy dated 07.08.1992 (Annexure P-1) for granting the benefit of additional increment on completion of 08 years of service and

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consequently, both the petitioners were granted additional increment after completion of 08 years of service. The said benefit has been ordered to be withdrawn by the respondents vide orders dated 06.08.2003 (Annexures P-3 & P-4). It is the case of the petitioner that no opportunity of personal hearing before passing the said orders was afforded to the petitioners, therefore, the said orders are bad in law and are liable to be set aside.

3. Written statement on behalf of the respondents has been filed, wherein it has been stated that since the benefit of additional increment was wrongly granted to the petitioners, therefore, notice dated 18.07.2003 was issued to them, to which they submitted their replies on 31.07.2003 & 30.07.2003, respectively and thereafter, the impugned orders dated 06.08.2003 were passed re-fixing the pay of the petitioners after withdrawing the said benefit.

4. The present petition was admitted on 10.01.2005 and further recovery from the petitioners was stayed.

5. During the course of hearing, it has been submitted by the learned State counsel that both the petitioner have retired from service on attaining the age of superannuation on 31.12.2020 and 28.02.2021, respectively and their pensionary benefits have already been released. However, only a sum of Rs.8,000/- each was recovered from the petitioners upto November, 2004.

6. Learned counsel for the petitioners submits that neither any specific order withdrawing the benefit of additional increment has been passed by the respondents nor an opportunity of personal hearing was

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afforded to the petitioners and vide impugned orders dated 06.08.2003, their pay was re-fixed after withdrawing the benefit of additional increment. He further submits that there was no representation on the part of the petitioners and the benefit of additional increment was granted by the respondents on their own while interpreting the policy dated 07.08.1992.

7. Per contra, learned State counsel submits that the apprentice service rendered by the petitioners cannot be counted for the grant of benefit of additional increment on completion of 08 years of service and since the services of the petitioners have been regularized w.e.f. 01.11.1986, therefore, they are entitled for the additional increment after completion of 08 years of regular service, however, they were wrongly granted the benefit of additional increment by counting their service w.e.f. 09.07.1983 and 18.07.1983, respectively, when they joined the service as apprentice Signaler.

8. I have heard learned counsel for the parties and perused the relevant documents with their able assistance.

9. Admittedly, both the petitioners have already retired from service on attaining the age of superannuation on 31.12.2020 and 28.02.2021, respectively, and all the pensionary benefits have been released to them. Recovery of Rs.8,000/- each was effected from the petitioners upto November, 2004 and further recovery from them was stayed vide order dated 10.01.2005 passed by this Court. 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



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petitioners that they were granted additional increment but it was granted by the respondents on their own. 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 ***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.”

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



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(i) & (v) of para 12 of the judgment of Hon’ble Supreme Court passed in *Rafiq Masih (White Washer) and others case (Supra)*. Consequently, respondents are directed to refund the recovered amount i.e. Rs.8,000/- each to the petitioners, within a period of 02 months from the date of receipt of certified copy of this order.

11. Disposed of in the above terms.

21.11.2024

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(NAMIT KUMAR)
JUDGE

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