IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

560

CWP-13602-2004
Date of decision:10.09.2024

Manohar Lal Saini and others

.... Petitioners

Versus

State of Haryana and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present:- Ms. Nidhi Dahiya, Advocate, for
Mr. Sanjay Mittal, Advocate, for the petitioners.

Mr. Tapan Kumar, DAG, Haryana

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AMAN CHAUDHARY. J. (ORAL)

1. Prayer made in the present petition is for quashing of letter dated 22.08.2003, Annexure P-10, vide which the pay of the petitioners had been reduced to their disadvantage and recovery ordered of the excess payment from their pay. In the index of the petition, reliance was placed on CWP No.12469 of 2004, titled **Kehar Singh and others vs. State of Haryana and others**, which was also admitted wherein also similar interim order had been passed, which has since been disposed of in terms of the order passed in CWP No. 7962 of 2005 in terms of order passed in CWP-19344 of 2003, titled as **Subhash Chander and others v. State of Haryana and others**, on 11.01.2006 involving the same controversy as involved in the present case, relevant paras thereof read thus:

> " xx xx xx
>
> As a consequence of the aforesaid communication, recovery proceedings were initiated against the petitioners. The

aforesaid recovery proceedings have been challenged by the petitioners through the present petitions.

It has been pleaded by the petitioners that the fixations of their pay as per 3rd proviso to rule 7 and as per 3rd proviso to rule 15 was correctly done, therefore, the interpretation now being suggested by the Financial Commissioner through Annexure P-3 was totally contrary to the language of the Rules and in fact amounted to a variation/amendment of the rules itself. On that account, it has been argued that the said interpretation was legally unsustainable and without authority of law. Additionally, it has been pleaded that since the Financial Commissioner had taken a decision at his level that the fixation in cases of the petitioners had been wrongly done, therefore, any subsequent show cause notice issued by a lower authority and any subsequent order passed after the receipt of the reply of the employee was merely an empty formality. On that account it has been argued that the recovery proceedings against the petitioners were also in violation of principles of natural justice. The petitioners have also challenged that in any case since there was neither any misrepresentation nor any fraud ever played by any of the employees in getting benefits from the State, therefore, no recovery proceedings in this regard could have been initiated.

Learned counsel for the petitioners during the course of arguments have reiterated the aforesaid contentions pleaded by the petitioners in the writ petitions.

Learned Advocate General, Haryana appearing for the State has defended the communication Annexure P-3 and has also argued that recovery proceedings had been ordered against the petitioners on account of the fact that it had come to the notice of the authorities that there was a mistake in the fixation of the pay of the petitioners. It has been argued that since the aforesaid mistake had been discovered at a later stage, therefore, the recovery proceedings have been ordered.

During the course of arguments, learned counsel for the petitioners have stated that in the present writ petitions, the petitioners would confine their claim only to the recovery being effected against them. It has further been stated by the learned counsel that all the petitioners shall approach the State Government in a representative capacity, through a detailed representation, bringing the notice of the State Government that the interpretation suggested by the Financial Commissioner in communication Annexure P-3 was wholly wrong and contrary to the language as well as the intent of the

Rules. On that account, learned counsel have prayed that this court, at this stage, may not deal with the validity of the interpretation suggested by the Financial Commissioner in the communication Annexure P-3 but may leave the question open, to be decided by the State Government on a representation to be filed by the petitioners, as aforesaid.

This prayer made by the learned counsel for the petitioners is not opposed by the learned Advocate General, Haryana.

In these circumstances, the only question which remains left for adjudication is as to whether the respondent-authorities are justified in effecting recovery from the petitioners when admittedly there was neither any mis-representation made nor any fraud ever played by the petitioners for extracting the aforesaid financial benefits.

The Hon'ble Supreme Court of India in the case of **Sahib Ram vs. State of Haryana** 1995(1) Services Cases Today 668, made the following observations:-

> "5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

A Division Bench of this Court in Charanjit Singh V. State of Haryana (C.W.P. No.8569 of 1997) decided on February 27, 1998 also held that since there was neither any misrepresentation nor any fraud ever played by the employee, therefore, the recovery proceedings for wrong payment were totally not justified. To the similar effect is the law laid down by another Division Bench of this Court in Karnail Singh v. State of Punjab and another 2003 (1) Service Cases Today 1042. In Karnail Singh's case (Supra) was followed. Additionally, reliance was also placed upon a Division Bench judgment of this Court in Ved Kumar and others v. The State

<u>of Punjab and others</u> 2001 (2) Service Cases Today 921. The following observations made in Ved Kumar's case were specifically noticed by the Division Bench in Karnail Singh's case (supra):-

> "3. No material has been placed before us to show any misrepresentation or fault on the part of the petitioners for the alleged excess payment. Since the petitioners have retired from service, for no fault on their part, on part of the gratuity could be withheld.
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> 4. The question involved in the writ petition is squarely covered by the decisions of this Court in Civil Writ Petition No.1141 of 1997 (Jagjit Singh v. Punjab State and others) decided on April 11, 1997 and Civil Writ Petition No.16258 of 1996 (S.D. Taneja v. State Haryana, decided on April 1, 1997).
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> 5. The action of the respondents in recovering/ withholding payment of the said amount of gratuity is hereby set aside. The respondents are directed to pay the balance amount of gratuity to each of the petitioners within eight weeks from the date when certified copy of this order is made available. In case of delay, the balance payment shall be made with interest at the rate of 10% per annum upto the date of actual payment."

Even in the case of E.S.P. Rajaram and others V. Union of India and others 2001(1) Recent Service Judgment 547, the Apex Court ordered that in view of the fact that the employees had received financial benefits and a different interpretation was being suggested later on, no recovery could be made of the payments already made.

Thus, it is very clear that the consistent view taken by this court and also the law laid down by the Apex Court is that once some financial benefits have been extended to an employee and the aforesaid benefits had not been extended on any misrepresentation or fraud played by the employee, then later on, if some other interpretation was being put to the rules, on which account it was found that the employee was not entitled to the aforesaid benefits, then no recovery for the aforesaid payments be made.

Following the aforesaid law, it is directed that the respondents shall not effect any recovery from the petitioners for the payments already made to them. The writ petitions are allowed to this extent.

However, in accordance with the prayer made by the learned counsel for the petitioners, the petitioners would be at liberty to approach the State Government, in a representative capacity, by filing a detailed representation to show that the interpretation to the rules, suggested by the Financial Commissioner and Principle Secretary to Government Haryana through communication dated August 22,2003 was incorrect and against the spirit of the rules. If any such representation is filed by the petitioners in a representative capacity, then on receipt of the same, the State Government shall take a decision thereupon within a period of six months by passing a speaking order.

With the aforesaid observations, the writ petitions stand disposed of."

3. LPA No.159 of 2006 (O&M) filed against the said judgment was disposed of on 04.04.2012, which reads thus:-

"By order dated 24.08.2006 this case was adjourned sine die to await the decision of the Full Bench in Budh Ram and others vs. State of Haryana and others. The decision of the Full Bench in Budh Ram's case (supra) is reported in 2009 (3) SCT 333.

Consequently, this LPA is disposed of in terms of the aforesaid order of the Full Bench in Budh Ram and others vs. State of Haryana and others.

4. Learned State counsel despite his best efforts, has been unable to controvert the submissions made on behalf of the petitioner and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

5. In wake of the above, the present petition is disposed of in terms of the judgment passed in **Subhash Chander and others** (supra).

(AMAN CHAUDHARY)
JUDGE

10.09.2024
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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No