



CWP-10275-2020 (O&M)

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

CWP-10275-2020 (O&M)
Date of decision: 11.09.2024

PRITPAL KAUR

...PETITIONER

VERSUS

PUNJAB MANDI BOARD AND ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. V.K.Shukla, Advocate for the petitioner.

Mr. Vikas Chatrath, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the orders dated 04.03.2020 (Annexure P-5) and 04.06.2020 (Annexure P-6), whereby the pay of the petitioner has been refixed and recovery of Rs.1,65,910/- has been made from the salary of the petitioner.

2. Shorn of unnecessary details, the brief facts are that the petitioner was appointed as Auction Recorder by Market Committee, Ferozepur in the pay scale of Rs.450-800 vide order dated 22.09.1986 and thereafter, her services were terminated on 08.06.1987, which was challenged before the Labour Court, Bathinda and vide award dated 19.01.1993, the petitioner was ordered to be reinstated in service with continuity in service and backwages w.e.f. 16.06.1990 i.e. the date of filing of the demand notice under Section 2-A of the Industrial Disputes Act, 1947 which has attained finality. Thereafter, the petitioner was

allowed to join her duty on 22.03.1994 and her pay was refixed and arrears from

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16.06.1990 to 22.03.1994 were released. The petitioner was due to retire on 30.06.2020, however, three months before her retirement impugned order dated 04.03.2020 (Annexure P-5) was issued, whereby she was informed that her pay has been refixed from 22.03.1994 instead of 16.06.1990 and she should contact the Accounts Branch and deposit the necessary arrears. Thereafter, vide order dated 04.03.2020, a sum of Rs.1,65,910/- was recovered from the salary of the petitioner. The said orders have been impugned in the present writ petition.

3. While issuing notice of motion vide order dated 20.07.2020, the operation of the impugned order was stayed.

4. Learned counsel for the petitioner submits that the impugned orders have been passed in unilateral manner without issuance of show cause notice to her nor she has been afforded an opportunity of personal hearing before refixing the pay of the petitioner and effecting recovery of Rs.1,65,910/-. He further submits that despite issuance of the order dated 11.07.2018 by the Secretary, Punjab Mandi Board not to recover any excess amount from the petitioner yet, the same has been recovered by the Market Committee. He further submits that the action of the respondents is in violation of the law laid down in judgment of the Hon'ble Supreme Court passed in ***State of Punjab Versus Rafiq Masih (White Washer) and Others:2015(1) SCT 195***.

5. Per contra, learned counsel for the respondents submits that since the pay of the petitioner had wrongly been fixed at the time of her reinstatement in service, therefore, the pay of the petitioner has been re-fixed and a sum of Rs.1,65,910/- has been recovered from the salary of the petitioner, which is perfectly legal and valid.

6. I have heard learned counsel for the parties and perused the record.

7. Admittedly, the petitioner had joined service with respondent-Market

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Committee, Ferozepur as Auction Recorder on temporary basis on 22.09.1986 and her services were terminated on 08.06.1987. However, pursuant to Award dated 19.01.1993, passed by the Presiding Officer, Labour Court, Bathinda, the petitioner was reinstated in service with continuity of service and back wages w.e.f. 16.06.1990 and she was allowed to join her duty as Auction Recorder on 22.03.1994. The stand of the respondents is that when the petitioner was reinstated in service, her pay was wrongly fixed as she was given the pay of regular post of Auction Recorder for the period from 1990-1994. Therefore, vide impugned orders dated 04.03.2020 (Annexure P-5) and 04.06.2020 (Annexure P-6), the pay of the petitioner has been refixed and recovery of Rs.1,65,910/- has been effected from the salary of the petitioner.

8. 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 petitioner that she was granted excess payment but it was granted by the respondents on their own. Even if an excess amount on the basis of wrong fixation of pay was paid to the petitioner, the same cannot be recovered from her after her retirement. 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.”

9. The case of the petitioner is covered under clause 12(i) (iii) of the judgment *ibid*.

10. Moreover, the re-fixation of pay of the petitioner as well as recovery made by the respondents is in violation of the principles of natural justice as neither any show cause notice was issued to the petitioner nor she was granted an opportunity of personal hearing.

11. Since the impugned orders dated 04.03.2020 (Annexure P-5) and 04.06.2020 (Annexure P-6) have been passed in violation of the principles of natural justice and the settled law, therefore, the same are hereby quashed and set aside. The respondents are directed to refund the amount, if any, recovered from the petitioner along with interest @ 6% per annum w.e.f. the date of recovery till its actual payment.

12. However, if the respondents inclined to pursue the matter qua re-fixation of pay of the petitioner, if deem appropriate, liberty is granted to them to do so in accordance with law and after adhering to the principles of natural



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- 13. Necessary compliance, in terms of this order, be made within a period of three months from the date of receiving of certified copy of this Court.
- 14. Disposed of in the above terms.

11.09.2024
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(NAMIT KUMAR)
JUDGE

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