



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

222

CWP-13697-2019 (O&M)

Decided on :08.05.2024

SUDARSHANA DEVI

. .petitioner

Versus

STATE OF HARYANA AND ANR

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Sandeep Sharma, Advocate,
Mr. Rohan Moudgil, Advocate and
Mr. Rohit Johar, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present petition, the challenge is to the order dated 03.10.2018 (Annexure P-2) and order dated 18.02.2019 (Annexure P-4) by which, the pay of the petitioner has been re fixed and the excess amount paid to the petitioner has been ordered to be recovered from him.

2. Learned counsel for the petitioner argues that while re-fixing the salary of the petitioner, no show-cause-notice was given to the petitioner and salary of the petitioner has been re-fixed which action on the part of the respondents is arbitrary and illegal.

3. Learned counsel for the petitioner further submits that keeping in view the judgment of the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195** wherein, any benefit which has been paid by the respondents to the employee for a continuous period of five years, the same cannot be recovered from him/her, hence, as by the impugned order, the salary of the



petitioner was being re-fixed from the year 2008, no recovery can be sought from the petitioner.

4. Learned counsel for the respondents on the other hand submits that as the petitioner's salary was not fixed correctly and vide impugned order dated 03.10.2018 (Annexure P-2), the salary of the petitioner has been re-fixed, it was found that a sum of Rs. 1,05,072/- has been paid in excess of her entitlement and is liable to be recovered from the petitioner as the same is public money, hence, the excess amount paid should be allowed to be recovered from the petitioner.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. It may be noticed that there is no allegation that the petitioner has misrepresented in any manner so as to get the salary benefit. The respondents have re-fixed the salary of the petitioner from the year 2008 and as of now after expiry of a period of 10 years, the respondents decided to revise the salary of the petitioner, which was being paid to him.

7. As per the judgment of the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, any excess amount which has been paid to an employee for a continuous period of five years, the said amount cannot be recovered. The relevant paragraph of the said judgment is 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.”

8. Keeping in view the fact that the salary of the petitioner has been refixed from the year 2008 and it is a conceded position that the petitioner was paid the benefit for more than five years, no recovery of excess amount can be made, hence, the recovery of Rs. 1,05,072/- is set-aside and any amount adjusted or recovered from the petitioner be refunded back to the petitioner including the amount of Rs. 41,172/-, which has been adjusted by the respondents from the salary of the petitioner as per the reply



filed by them.

9. Let the present order be complied with within a period of 08 weeks from the date of receipt of copy of this order.
10. The present petition stands allowed in above terms.
11. Civil Miscellaneous application pending if any is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

08.05.2024

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