

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
Neutral Citation No. 2024:PHHC:055344-DB

(104) LPA-706-2023 (O&M)
Decided on : 24.04.2024

Union of India and othersAppellant(s)
Versus
Ex-SI/GD Bachittar SinghRespondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present:- Mr. Karan Kumar Jund, Central Government Counsel
for the appellants.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-1839-LPA-2023

Application for condonation of delay of 111 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit of the official. Delay of 111 days in filing the appeal is condoned.

CM stands disposed of

LPA-706-2023 (O&M)

Consideration in the present letters patent appeal is sought of the order dated 01.02.2023 passed by the learned Single Judge in CWP-5148-2019, whereby the learned Single Judge has allowed the writ petition and quashed the recovery proceedings of Rs.1,46,343/-, which was due for the period from 01.01.2016 to 30.09.2016. The recovered amount of Rs.35,400/- was to be refunded alongwith interest @ 6% per annum.

2. The learned Single Judge had relied upon the relevant judgments in question, namely, **State of Punjab and others Vs. Rafiq Masih, (2015) 4 SCC 334** and the subsequent judgment in **High Court of Punjab & Haryana**

and others VS. Jagdev Singh, (2016) 14 SCC 267 and has also referred to the judgment of the Full Bench of this Court in **Budh Ram and others Vs. State of Haryana and others, 2009 (3) PLR 511**. It was noticed by the learned Single Judge that the writ petitioner had earlier been serving in the Indian Army from 26.11.1983 to 30.11.2011 and was discharged from the post of Honorary Lieutenant and, thereafter, appointed as Sub-Inspector with the CRPF, the appellants herein and served from 20.12.2011 till 19.12.2018 on contractual basis. The appellants had implemented the 7th Central Pay Commission Report and benefit was also given of the pay-scale in the pay band of Rs.9300/- with Grade Pay of Rs.4200/- to the writ petitioner and he was entitled for the revised pay from 01.01.2016. On account of the clarification sought on 06.09.2018, the said benefit as such was sought to be denied.

3. Apparently, on 17.09.2018 (Annexure R-7), the matter was clarified and it was held that the Ex-Army personnel employed purely on contractual basis are not entitled for revised pay. It was, thereafter, the impugned order came to be passed on 27.09.2018 (Annexure P-2) that the overpaid amount be recovered, which had been quashed. The amount was then quantified vide Annexure P-3 on 03.10.2018.

4. The learned Single Judge noticed that the present appellant had themselves granted the benefit of 7th Central Pay Commission and, thereafter, took the U-turn and got a clarification and thus, there was no mis-representation on the part of the writ petitioner and the rectification was done. The additional salary had been received without any fault or undue influence or mis-representation and resultantly the judgment passed in **Rafiq**

Masih (supra) has been relied upon while falling on Category (v) that it

would be iniquitous or harsh or arbitrary and it far outweighs the employee's right to recover. The judgment in the case of **Jagdev Singh (supra)** was also distinguished on the ground that no such undertaking was given and, therefore, the said employee could not be prejudiced.

5. Counsel for the appellants has relied upon judgment of the Apex Court in **U.T. Chandigarh and others Vs. Gurcharan Singh and another, (2014) 13 SCC 598** to contend that any excess amount paid is liable to be recovered.

6. We are of the considered opinion that we have the benefit of the two equal benches judgments of the Apex Court. Even otherwise the judgment in **Rafiq Masih (supra)** was passed at a subsequent point of time. Resultantly, in view of the judgment passed by Full Bench of this Court in **Indo Swiss Time Limited Vs. Umrao and others, AIR 1981 (P&H) 213**, it is open to us to follow the view to which we subscribe. Relevant observations of the judgment read as under:

"22. A perusal of the judgments in the municipal corporation of the city of Ahmedabad and Himalaya Tiles cases would plainly indicate that there is a direct conflict on the point therein. Both the judgments have been rendered by a Bench consisting of two Hon'ble Judges and cannot possibly be reconciled. This situation at once brings to the fore the somewhat intricate question which is now not of infrequent occurrence namely, - 'when there is a direct conflict between two decisions of the Supreme Court rendered by co-equal Benches, which of them should be followed by the High Courts and the Courts below'.

23. Now the contention that the latest judgment of a coordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the Superior Court are of co-equal Benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting

judgments of the Superior Court and of equal authority are extent then both of them cannot be binding on the Courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of coequal Benches of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant."

6. Resultantly, we subscribe to the judgment in **Rafiq Masih (supra)** and hold that the reasoning given by the learned Single Judge does not suffer from any infirmity in the peculiar facts and circumstances and dismiss the appeal.

7. Dismissed in limine.

8. All the pending applications including CM-1842-LPA-2023 for additional evidence also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

24.04.2024
Naveen

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes