

**CWP-23745-2014****1**

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

(232)**CWP-23745-2014****Date of Decision : August 01, 2024****Harwinder Singh and others****.. Petitioners**

Versus

State of Punjab and others**.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Hitesh Sood, Advocate, for the petitioners.

Mr. Amarpreet Singh Bains, Assistant Advocate General,
Punjab.

Mr. Gagandeep Singh, Advocate, for respondent No.2.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance being raised by the petitioners is that they were paid the Traveling Allowance/DA by the respondents but thereafter, upon re-consideration, the said traveling allowance has been revised and the excess payment is sought to be recovered by the respondents vide recovery notice dated 23.09.2014 (Annexure P-1), which is arbitrary and illegal.

2. Further prayer of the petitioners is that the revised TA/DA Rules, 2013 of Sarva Shiksha Abhiyan Authority Punjab as notified on 28.09.2013 should be implemented and the benefit qua the traveling allowance be granted to the petitioners according to 2013 Rules.



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3. Learned counsel for the respondents does not dispute the factum that the revised Traveling Allowance Rules and Regulations 2013 are for the employees of the Sarva Shiksha Abhiyan Authority, Punjab governing the issue and submits that the claim of the petitioners for the grant of TA/DA will be considered under the said Regulations.

4. Learned counsel for the respondents further submits that excess amount already paid to the petitioners is liable to be recovered as the same was wrongly given.

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

6. Once, the respondents on their own had paid excess amount to the petitioners, who are working on contractual basis on a fixed salary, now recovering the said amount from them will be too harsh and will amount to financial hardship upon the petitioners.

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 employee, who is working on a Class-III or Class-IV post, should not be subjected to recovery of the excess payment made. 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. Even otherwise, there is no averment in the reply that there was any misrepresentation on the part of the petitioners to claim the said amount. As per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022***, where there is no misrepresentation on the part of the employee, no recovery can be done from the concerned employee. The relevant paragraph of the said judgment is as under:-



“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

9. Keeping in view the abovementioned settled principle of law, no recovery can be done from the petitioners of the excess amount paid on account of TA/DA and the same is accordingly set aside.

10. With regard to the claim of the petitioners for the grant of TA/DA under 2013 Regulations, the respondents have already conceded the fact that the petitioners’ claim will be considered under 2013 Rules for the grant of TA/DA. That being so, no further orders are required to be passed by this Court on the said aspect.

11. In case, the petitioners have not been paid TA/DA under 2013 Rules and Regulations, the petitioners are free to claim the same by filing appropriate representation, which representation should be decided by the

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respondents within a period of eight weeks of the receipt of any such claim by passing an appropriate speaking order.

12. The present writ petition is disposed of in above terms.

August 01, 2024*harsha***(HARSIMRAN SINGH SETHI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No