



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 27.11.2024

1. CM-18342-CWP-2023 in/and
CWP No.16538 of 2023 (O&M)

Sarabjit Singh Petitioner

Versus

State of Punjab and others Respondents

2. CWP No.16967 of 2023 (O&M)

Balbir Singh Petitioner

Versus

State of Punjab and others Respondents

3. CWP No.16975 of 2023 (O&M)

Pishora Singh and others Petitioners

Versus

State of Punjab and others Respondents

4. CWP No.17010 of 2023 (O&M)

Radha Krishan Petitioner

Versus

State of Punjab and others Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ankush Sharma, Advocate, for
Mr. M.K. Dogra, Advocate
for the petitioner(s) (in all petitions).

Mr. Amarpreet Singh Bains, AAG, Punjab.



HARSIMRAN SINGH SETHI, J.(ORAL)

CM-18342-CWP-2023 in CWP No.16538 of 2023

This is an application for placing on record the reply filed on behalf of respondents No.1 to 3-State.

Application is allowed and the said reply is taken on record.

Main Cases

1. Vide this common order, four petitions bearing CWP-16538-2023, CWP-16967-2023, CWP-16975-2023 and CWP-17010-2023, the details of which have been given in the heading, are being disposed of.

2. In the present petition, the grievance being raised by the petitioner is that not only the salary of the petitioner has been reduced but the recovery has also been ordered from his salary.

3. Learned counsel for the petitioner, at the outset, submits that though, the reduction of the pay has also been challenged but, the same be treated as not pressed and the only challenge be considered *qua* the recovery of the excess amount being recovered from the petitioner.

4. Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that the pay of the petitioner was wrongly fixed and the petitioner continued to get the same but as, the said discrepancy came to the notice of the respondents and the petitioner's salary has been fixed as per his entitlement, the excess amount paid to the petitioner is liable to be recovered and, therefore, the Department be allowed to do the recovery of the excess amount paid to the petitioner.

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



6. The question whether, the pay which was fixed by the respondent without there being any input by the petitioner, the excess amount paid can be recovered or not, which was continuously paid to the petitioner by the respondent for a period of 09 years after the same was fixed in the year 2014.

7. The said question has already been settled by the Hon'ble Hon'ble Supreme Court of India in the case of '**State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**' 2015(1) S.C.T. 195, the relevant paragraph 12 of the said judgment reads 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. A bare perusal of the above reproduction would show that no recovery can be done from an employee who is working on Class-III & Class-IV post. In the present petition, the petitioner was working as a Driver which is a Class-III post. Learned counsel for the respondents has not been able to distinguish as to how, by ignoring the settled principles of law in ***Rafiq Masih’s case (supra)***, the recovery has been ordered from a Class-III employee.

9. Not only this, no recovery can be done from an employee, who has been continuously paid the benefit, which is sought to be withdrawn for a period of more than five years. In the present case, the petitioner has been paid the benefit of a pay for a period of nine years before refixing the same, hence, as per para 12 of the judgment in ***Rafiq Masih’s case (supra)***, no recovery can be done from the petitioner.

10. Apart from this, the Hon’ble Supreme Court of India in ***Civil Appeal No.7115 of 2010*** titled as ***‘Thomas Daniel Vs. State of Kerala and others’***, decided on 02.05.2022, has held that no recovery can be done from an employee, who never misrepresented. The relevant paragraph of the 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.”

11. In the present case, there is no allegation that the petitioner ever misrepresented to claim any benefit which was later on withdrawn. In the absence of any such misrepresentation, even otherwise the recovery cannot be done.
12. Keeping in view of the above, the recovery of the excess amount being done from the petitioner is contrary to the settled principles of law as noticed hereinbefore and accordingly, the same is set aside. The amount, if any recovered from the petitioner, be refunded back to the petitioner, within a period of 08 weeks from the receipt of a certified copy of this order.
13. With these observations, the present petitions are allowed in terms mentioned hereinbefore.
14. The pending miscellaneous application, if any, shall also stands disposed of.
15. A photocopy of this order be placed on the files of connected cases.

27.11.2024
D.Bansal

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No