

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

2024.PHHC.100344



CWP-18636-2024

Date of Decision: 05.08.2024

BIRENDER KUMAR

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Saurabh Dalal, Advocate for the petitioner.

Mr. R.S. Budhwar, Addl. AG, Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* quashing the impugned orders dated 20.05.2024 and 23.07.2024, Annexures P-2 and P-3, respectively; and a writ of *mandamus* directing the respondents not to effect the recovery of amount already paid, and refund the amount that has been recovered.

2. Learned counsel contends that the petitioner retired from service as Vocational Instructor/Office Secretary-ship Instructor (Hindi) on 31.03.2017. He was granted second Assured Career Progression (ACP) scale with effect from 04.03.2014, vide office order dated 05.07.2023, Annexure P-1. The arrears amounting to ₹5,45,736 were credited to his account on 26.12.2023. Without issuing any show cause notice or affording any opportunity of hearing, respondents vide office order dated 20.05.2024, ordered recovery of ₹1,31,420. Later, another office order dated 23.07.2024 (wrongly mentioned as 20.05.2024) was issued ordering recovery of ₹3,75,027, apart from the recovery already ordered. And part payment of

the amount was made by the petitioner under duress. It is further contended that the petitioner worked as Group 'C' employee, and has superannuated from service as well. Therefore, in terms of government instructions dated 23.02.2016, Annexure P-4, the amount credited without any fault of his could not have been recovered.

3. Learned State counsel, appearing on advance notice, is not in a position to dispute that no opportunity of hearing was afforded to the petitioner before passing the impugned orders. It is also not disputed that in terms of Clause 2 of the instructions, dated 23.02.2016, recovery from a retired employee is not to be effected. He, however, contends that petitioner was a Group 'B' employee, being in the service as vocational teacher.

4. In view thereof, the impugned orders, dated 20.05.2024 and 23.07.2024, are set aside, and the second respondent-Director Secondary Education, is directed to pass a fresh reasoned order after issuing show cause notice, and affording due opportunity of hearing to the petitioner. The officer shall also take a decision on refunding the amount said to have been deposited by the petitioner.

5. Disposed of.

(TRIBHUVAN DAHIYA)
JUDGE

05.08.2024

kv

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