

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 08.02.2024

1. CWP No.8763 of 2017 (O&M)

Kuljit Singh and others
.....Petitioners
Versus
State of Punjab and others
.....Respondents

2. CWP No.11625 of 2017 (O&M)

Gurjant Singh Maan
.....Petitioner
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Jasbir Singh, Advocate
and Mr. Sukhcharan Singh, Advocate
for the petitioner(s).

Mr. T.P.S. Walia, AAG, Punjab.

NAMIT KUMAR J. (Oral)

1. This judgment shall dispose of CWP Nos.8763 and 11625 of 2017, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CWP No.8763 of 2017.

2. The present petition has been filed by the petitioner(s) under Articles 226/227 of the Constitution of India, impugning the order dated 30.09.2015 having endorsement dated 20.10.2016 (Annexure P-10), whereby the pre-revised pay-scale of Rs.4400-7000 granted in

pursuance to Department of Finance, Government of Punjab letter dated 04.09.2000 in the ratio of 50:50, to the Investigators has been withdrawn and the order dated 12.01.2017 (Annexure P-11) whereby recovery has been ordered against the petitioner(s) and the order dated 22.03.2017 (Annexure P-13) whereby the pay of the petitioner(s) have been refixed after withdrawing the said benefit.

3. Brief facts of the case, as have been pleaded in the petition, are that the petitioner(s) are working as Investigators in the Department of Punjab State Planning Board and Economics and Statistical Organization and Department of Planning and have been posted at various Districts in the State of Punjab. It is the case of the petitioner(s) that they were granted the pay-scale of Rs.4400-7000 in the ratio of 50:50 w.e.f. 01.01.1996 and the said ratio was maintained vide Notification dated 04.09.2000 issued by Finance Department (Annexure P-2) whereby 50% were granted the revised pay-scale of Rs.3120-5160 and 50% were Rs.4400-7000 having 05 years experience. On 03.10.2011, the Department of Finance bifurcated the post of Clerk into the ratio of 50:50 on the pattern of the post of Investigators for the grant of pay-scale and the same was maintained even on further revision w.e.f. 23.12.2011. The petitioner(s) were granted the said pay-scale of Rs.4400-7000 (after 05 years of experience) vide orders dated 19.07.2007, 25.03.2011 and 12.09.2011, however, the said orders were withdrawn by the respondents vide impugned order dated 30.09.2015 having endorsement dated 20.10.2016 (Annexure P-10) and vide order

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dated 12.01.2017 (Annexure P-11) recovery has been ordered against the petitioners. Thereafter, the petitioners submitted representation dated 21.03.2017, with a request not to recover the amount already paid, however, vide order dated 22.03.2017 (Annexure P-13), the pay of the petitioners have been refixed by reducing the grade pay from Rs.2800/- to Rs.1950/- on account of withdrawal of pre-revised pay-scale of Rs.4400-7000 and the basic pay, which was fixed earlier at Rs.11,170/- has been reduced to Rs.9,660/- w.e.f. 28.11.2008. These orders have been impugned in the present writ petitions.

4. While issuing notice of motion on 27.04.2017, it was ordered that no recoveries be effected from the petitioners. Reply by way of affidavit of Sh. Parminder Singh Walia, Director (Admn.), Economic and Statistical Organization, Punjab, has been filed, on behalf of respondents No.1 to 4, wherein it has been averred as under:-

*“2. That it is submitted that revised pay scale rules were introduced by the Government of Punjab vide notification dated 27.05.2009 and were deemed to come into play w.e.f. 01.01.2006. It is the rules were silent about the claim of investigators and no specific instructions were there. It is submitted that benefits were granted as since there were various representation were received from the employee from the department. **It would be pertinent to mention here that on 20th October 2016, the order of recovery were made when it was transpired that benefit of revised pay scale extended to the petitioners are result of mistake and were not applicable to the petitioners and recovery were ordered from the concern employee. It is submitted that there was no provision for Placement of***

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50:50 ratio Investigator under the Punjab Civil Services
(Revised Pay) Rules, 2009 as detailed above.

XXXX XXXX XXXX XXXX

6. That in reply to contents of para no.6 it is submitted that in Finance Department letter dated 23-12-2011, there is no mention about bifurcation of Investigators into 50:50 ratio when as there is clear mention about it in Finance Departments letter dated 03-10-2011 and 15-12-2011 regarding placement of clerks into 50:50 ratio with regard to the post of Clerk and Junior Assistants. Further that the respondents inadvertently placed the petitioners in 50:50 ratio for which they were not entitled as per Finance Departments letter dated 23-12-2011 as the category of Investigator was not included in the scheme and further that Punjab Civil Services Rules 2009 were also silent about it.

7. The contents of para no. 7 are matter of record with regard to table furnished in the writ petition. It is submitted that revised pay scale was introduced w.e.f. 01.01.2006 on the basis of notification dated 27.05.2009 which was silent about 50:50 ratio to petitioners. That respondents inadvertently placed them in 50:50 ratio as they were getting it before 1-1-2006. These benefits were withdrawn when a specific reply was given by Government vide letter dated 5-12-2014 that there is no provision of 50:50 placement to petitioners.

8. That the contents of para no.8 are matter of record. It is submitted that revised pay scale was introduced w.e.f. 01.01.2006 vide notification dated 27.05.2009. Further that this notification was silent about 50:50 placement but respondents inadvertently placed them in 50:50 ratio as they were getting it before 1-1-

2006. These benefits were withdrawn when a specific reply was given by Government vide letter dated 05-12-2014 (Annexure R-2) that there is no provision of 50:50 placement to petitioners. ”

5. A perusal of the reproduction made above would show that the case of the respondents is that the said benefit was granted to the petitioners by mistake and the said mistake has been rectified and the pay of the petitioners have been refixed and the excess amount has been ordered to be recovered from the petitioners.

6. Learned counsel for the petitioners submits that the action of the respondents in withdrawing the benefit of pay-scale of Rs.4400-7000 (pre-revised) is totally illegal and arbitrary as the same was granted to the petitioners at par with Clerks and the same cannot be withdrawn. He further submits that while withdrawing the said benefit, no opportunity of hearing has been afforded to the petitioners and, therefore, action of the respondents is in violation of the principles of natural justice. He further submits that the recovery order passed against the petitioners is in violation of the law laid down in judgment of the Hon'ble Supreme Court passed in ***State of Punjab Vs. Rafiq Masih (White Washer) and others: 2015(1) S.C.T. 195***. Learned counsel for the petitioner at the time of arguments has also submitted that he has confined the scope of the present petition to the extent of recovery only.

7. On the other hand learned counsel for the respondents, while referring to the averments made in the written statement, submits that the petitioners were granted the pay-scale of Rs.4400-7000 (pre-

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revised) by mistake and the said mistake has been rectified vide impugned orders and since the petitioners were not entitled of the said pay-scale, therefore, the recovery has rightly been ordered against the petitioners. He further submits that the petitioners have also submitted undertakings (Annexures R-1/1 to R-1/17), which reads as under:-

Undertaking

I Kuljit Singh, Investigator hereby undertakes that if by any Mistake/Amendment in Rules/Audit objection raised by Audit party in fixation of my Pay in the Pay scale Rs. 4400-7000 w.r.t. orders issued vide letter No. ESO(E-6)-2011/14986-91 dated 12-9-2011, I will be bound to re-pay the excess amount/adjustment from my Salary/Pension.

Sd/- (Kuljit Singh) 10-10-11
Investigator

Superintendent(Admn.)

Sd/-18-10-11 Director(Admn.)

Thus, in view of the law laid down by the Hon'ble Supreme Court in "***High Court of Punjab and Haryana and others vs Jagdev Singh***", 2016(4) SCC 267, the petitioners are bound to return the excess amount received by them.

8. I have heard learned counsel for the parties and perused the record.

9. It is the case of the respondents that the pay-scale of Rs.4400-7000 was granted to the petitioners by mistake and the said mistake has been rectified and the same has been withdrawn and since

they have already furnished the undertakings, therefore, the recovery has rightly been ordered to be effected from the petitioners. Both the arguments raised by learned counsel for the respondent-Corporation are not sustainable. Firstly, even if an excess amount on the basis of wrong fixation of pay while granting higher pay-scale was paid to the petitioners, the same cannot be recovered from them after their retirement. The action of the respondents is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (Supra)***. The relevant portion of the aforesaid judgment is reproduced as under:-

“18. 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.”*

10. The facts and circumstances of the present case suggests that it is not the case of the respondents that it was due to some fraud or misrepresentation on the part of the petitioners that the higher pay-scale was granted to them and it was on the basis of mistake of the respondents that the petitioners drew the higher pay-scale.

11. So far as the second argument raised by learned counsel for the respondents that the petitioners had furnished undertakings vide Annexures R-1/1 to R-1/17, are concerned, the same is not sustainable in view of the fact that the said undertakings is a stereotype undertakings and are also generalize in nature. A perusal of the undertakings (Annexures R-1/1 to R-1/17), would show that the said undertakings were taken from the petitioner(s) in the year 2009 while revising their pay-scales w.e.f. 01.01.2006, except for petitioner No.1 whose undertaking is dated 10.10.2011.

12. In view of the above, this Court is of the considered view that the case of the present petitioners is squarely covered by the judgment of Hon'ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)*** as the petitioners are Class III employees and the reliance placed upon the undertakings will not be relevant in present case.

13. Further, the recovery has been ordered by the respondents in violation of the principle of natural justice as neither any show cause notice was issued to the petitioners nor they were granted any opportunity of personal hearing.

14. Consequently, the present writ petitions are allowed and the

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impugned order(s) whereby recovery has been ordered against the petitioner(s) are hereby quashed and the respondents are directed to refund the amount recovered from the petitioners within a period of 03 months from the date of receipt of certified copy of this order.

15. Pending application(s), if any, also stand disposed of.

(NAMIT KUMAR)
JUDGE

08.02.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No