

CWP-31496-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

CWP-31496-2018
Date of Decision: 04.01.2024

Sunil Kumar

...Petitioner

Versus

Food Corporation of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Dalip Kumar Tuteja, Advocate for the petitioner
Mr. Rajesh Garg, Senior Advocate with
Mr. Mandeep Singh, Advocate and
Ms. Neha Matharoo, Advocate
for respondents-Food Corporation of India

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting of order dated 15.10.2018 (Annexure P-4) whereby respondent has ordered recovery of benefit extended under Stagnation Impact Amelioration Scheme 2014 (for short '**2014 Scheme**').
2. The petitioner was working with respondent-Food Corporation of India. The petitioner on 04.12.2003 was extended benefit of selection grade. On 31.12.2008, the petitioner was promoted as A.G.-I (Accounts). The petitioner was extended benefit of 2014 Scheme by order dated 09.06.2016 (Annexure P-3). The said order extended benefit of aforesaid scheme w.e.f. 01.09.2008. The respondent-corporation in 2018 realized that petitioner was

extended benefit of selection grade in 2003 and thereafter promoted in 2008, thus, petitioner was not entitled to benefit of 2014 Scheme. The respondent-corporation vide impugned order dated 15.10.2018 issued demand notice to the petitioner.

3. Learned counsel for the petitioner submits that the petitioner at the time of extending benefit was Class-III employee even though at the time of initiation of recovery proceedings, he was Class-II employee. The petitioner was extended benefit beyond period of five years, thus, case of the petitioner is squarely covered by judgment of Supreme Court in ***State of Punjab v. Rafiq Masih (White Washer), (2015) 4 SCC 334***.

4. *Per contra*, Mr. Rajesh Garg, Senior Advocate for the respondents submits that the petitioner furnished undertaking at the time of extension of benefit of 2014 Scheme, thus case of the petitioner is squarely covered by judgment of Supreme Court in ***High Court of Punjab & Haryana and others v. Jagdev Singh, 2016 (14) SCC 267***. The petitioner at the time of initiation of recovery was Class-II employee. The recovery was initiated within a very short span from the date of granting benefit, thus, case of the petitioner is not covered in any of the clauses contemplated in judgment of Supreme Court in *Rafiq Masih*.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. From the perusal of record, it comes out that petitioner in the petition, especially the prayer clause, has not challenged legality of

withdrawal of benefit of 2014 Scheme extended to the petitioner. There is an implied consent of the petitioner that benefit of the 2014 Scheme was wrongly extended to him. In any case, it is undisputed fact that first increment under the 2014 Scheme was available on completion of six years and thereafter second increment on further completion of six years and third increment on completion of eight years of service. The benefit was subject to condition that the employee during the said period has not availed benefit of promotion or selection grade. The petitioner admittedly, got selection grade in December' 2003 and promotion in December' 2008. On account of receipt of selection grade and promotion, the petitioner was not entitled to benefit of aforesaid scheme. Despite not being entitled to the benefit of aforesaid scheme, the respondent-corporation by mistake, granted benefit of the scheme to the petitioner. The petitioner was Class-II employee at the time of demand. The petitioner has filed undertaking which is usually filed by every employee at the time of grant of increment to the effect that if it is found at later stage that benefit has been wrongly granted, the organization would be free to recover it. Undertaking cannot be for indefinite period but this cannot help the petitioner because in the present case recovery was initiated within two years. The petitioner had not retired at the time of initiation of recovery. As per the petitioner, he has received a sum of ₹1,30,000/- and the said amount was paid after deducting income tax. The petitioner cannot be asked to pay the amount which was deposited with Income Tax Department by the respondent. The amount of recovery is not an exorbitant amount. The petitioner has not discharged any duty which he was not supposed to discharge. The petitioner discharged duties which he was assigned as per his job profile.

7. Keeping in view the amount of recovery, short span between the date of extension of benefit and its recovery, the status of employee and judgment of Supreme Court in *Jagdev Singh (supra)*, this Court does not find that it would be harsh if respondents are permitted to recover amount wrongly paid to the petitioner. This Court is not oblivious of the fact that respondent is a government organization and public money is involved.

8. As per the petitioner, after deduction of income tax, he had received a sum of ₹1,30,000/- whereas respondent is disputing the said payment. It is hereby made clear that respondent shall not recover TDS which has already been deposited with the Income Tax Department, however, respondent-corporation would be free to recover correct amount. The recovery shall be made in twelve instalments commencing from 01.02.2024.

9. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

04.01.2024
Mohit Kumar

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