



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: February 08, 2024*

+ W.P.(C) 10396/2019, CM APPL. 42941/2019

(57) SATISH KUMAR MALIK Petitioner

Through: Ms. Saahila Lamba, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Pradeep Kumar Jha, SPC with
Mr. Bijender Singh, Office Supdt.
Ministerial Staff for UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

1. Sometime in March, 2019, the petitioner came to know that the respondents had decided to recover a sum of Rs.53,656/- from his salary for the wrongful compensation paid to him during the years 2015 and 2016. In fact, initially a deduction of Rs.5,366/- was made from his salary for the month of March, 2019, but from August, 2019 onwards the respondents started regularly deducting a sum of Rs.2,415/- from the monthly salary of the petitioner.

2. Aggrieved by the aforesaid action of the respondents, the petitioner sent representations dated 23.04.2019, 09.05.2019 and 02.06.2019 before the *Competent Authority* i.e. Assistant Security Commissioner-respondent no.3 herein praying for stoppage of recovery from his monthly salary.



Receiving no response from the respondents, the petitioner filed the present petition under Article 226 of The Constitution of India seeking a direction to the respondents for refund of the amount deducted from his salary from March, 2019 onwards and also calling upon them not to make any further deductions from his salary.

3. In view of the aforesaid facts, learned counsel for the petitioner submits that the action of the respondents in making a recovery from the salary of the petitioner is not only unfair and arbitrary but is also in complete variance with the settled legal position qua making recoveries from the salaries of Government Employees. She submits that the respondents neither issued any show-cause notice nor sent any communication to the petitioner before starting such deduction from his monthly salary.

4. Learned counsel further submits that even though the petitioner was in the category of *medically de-categorized* personnel waiting for absorption in the alternative post, he had still worked on several *Saturdays, Sundays and Gazetted Holidays* (hereinafter referred to as '*Holidays*') in the years 2015 and 2016 and therefore, in light of the relevant rules, he was entitled to receive cash compensation for the same and the same was duly paid to him and thus, in light of this position, the recovery being made from his salary is not legally tenable. To substantiate the said proposition, she places reliance upon *State of Punjab & Others vs Rafiq Masih* (2015) 4 SCC 334 wherein the law relating to recovery to be made from the salary of an employee has been well summarized. In light of the observations made in the aforesaid judgment, learned counsel



submits that since the petitioner is a Group-C employee, therefore, any recovery made from his salary is impermissible in law.

5. On the other hand, learned counsel for the respondents submits that the recovery of compensation paid to the petitioner for the work done on holidays is fair and lawful. He places reliance upon two Railway Board Letter's No.2002/Sec(E)/AL-2/1/De-Categorized Staff dated 16.05.2006 and 05.09.2006 wherein it has been stipulated that the *medically de-categorized* staff of RPF/RPSF are entitled for Ration Money and Washing Allowance only till such time they are absorbed in alternate non-RPF/RPSF categories in other departments of the Railways and are clearly not entitled for cash compensation for work done on holidays as claimed by the petitioner herein. He further submits that the Indian Audit and Accounts Department, Northern Railways, Delhi Division, New Delhi vide its Inspection Report dated 26.04.2017 found that despite the petitioner being *medically de-categorized*, he was erroneously paid cash compensation of Rs.53,656/-for the years 2015 and 2016 and it is this amount, that the respondents have started deducting in a phased manner from the monthly salary of the petitioner.

6. This Court upon perusal of the documents on record and after hearing the learned counsel for the parties as also after going through the judgments cited by them finds that the present case of the petitioner, who is, *admittedly*, a Group-C employee with the RPF is involving recovery of an amount of Rs.53,656/- from his salary as the respondents claim that the same was wrongly paid to the petitioner.

7. Without dwelling into the factual aspects, this Court in view of the settled law laid down by the Hon'ble Supreme Court in *State of Punjab &*



Others (supra) while dealing with a similarly situated bunch of persons who were similarly given monetary benefits in excess of their entitlement consequent upon the mistake committed by the concerned Competent Authority therein in determining the actual emolument(s) payable to them, after taking into consideration earlier pronouncements also rendered by the Hon'ble Supreme Court involving the same issue, held 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."

13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."



8. In the present case also, the petitioner, *admittedly*, being a Class III employee with the RPF, undisputedly falls in the first category of employees being “*Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service)*” as enunciated by the Hon’ble Supreme Court in *State of Punjab & Others (supra)*.

9. Factually, it is not disputed by the respondents that they had not issued any show cause notice or sent any kind of communication prior to commencing with the deductions from the monthly salary of the petitioner. The same is also against the principles of natural justice as the petitioner ought to have been apprised of the said deductions prior to them being effectuated, at least once.

10. Therefore, in view of the undisputed positions hereinabove, in the opinion of this Court, the present is a fit case for the grant of reliefs as sought by the petitioner.

11. Consequently, the present petition is allowed and the respondents are directed to refund all the recoveries made by them from the salary of the petitioner since and from March, 2019 within a period of four weeks hereinafter.

12. Accordingly, the present petition is allowed with the aforesaid directions.

SAURABH BANERJEE, J

V. KAMESWAR RAO, J

FEBRUARY 08, 2024/rr