



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-22718-2022 (O&M)

Date of decision: 07.03.2025

Rajender Kumar

...Petitioner

VERSUS

The State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Tejpal Singh Dhull, Advocate for the petitioner(s).

Mr. Tapan Kumar, DAG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenging the impugned order dated 09.06.2022 whereby the respondents have revised the salary of the petitioner at the minimum pay-scale w.e.f. 01.11.2017 and have directed recovery of the excess amount paid, the instant petition has been filed.

2. The undisputed facts which emerge from a perusal of the present writ petition are that the petitioner was appointed as a Canal Patwari, on contract basis on DC rates, against the regular sanctioned posts on 07.02.2008 and he was being paid salary at DC rates for the said post. The petitioner continued to work on the said post for more than 14 years and on expiry of every contract duration of 06 months, the contract was renewed. Since the respondents regularly used to issue advertisements for engaging people as Canal Patwari on contract basis, the petitioner approached this Court to protect his interest and to avoid being replaced by another



contractual employee. This Court, vide its order dated 28.02.2014, passed in a bunch of writ petitions including CWP-9074-2013, disposed of the writ petitions with liberty to the petitioner(s) to approach this Court in case the respondent-State proceeded to appoint any Canal Patwari on contract basis on the posts where the petitioner(s) therein were appointed and had continued till their termination. He submits that in view of the aforesaid order passed by this Court, the petitioner continued to discharge his duties against the contractual post with no complaint of any nature whatsoever and no regular appointment was made.

3. It is further submitted that he approached the respondents with a prayer that having worked for such a long period, he may be given minimum regular pay-scale along with the Dearness Allowance (D.A.) and the grade pay meant for the post. The said request was never acceded to, hence, the petitioner approached this Court by filing CWP-15800-2019, which was disposed of vide order dated 31.05.2019 issuing a direction to the respondents to decide his representation. Vide impugned order dated 09.06.2022, the respondents directed that pay of the petitioner be fixed at the minimum of the pay-scale without the D.A. retrospectively w.e.f. 01.11.2017. He submits that as a result of re-fixation of the pay, the salary worked out was Rs. 19900/- which was much lower compared to the salary that was already being released to the petitioner under the D.C. Rates. The respondents accordingly initiated effecting of recovery of allegedly excess salary from the petitioner w.e.f. 01.11.2017 by retrospective enforcement of



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the order re-fixing the pay of the petitioner vide office order No.5104/1-AE dated 09.06.2022.

4. It is submitted by the learned counsel for the petitioner that the terms & conditions of the engagement could not have been retrospectively modified to the petitioner's prejudice. Moreover, the fixation of pay at the minimum of pay scale without the D.A. is already in conflict with the judgment of Hon'ble Supreme Court and the D.A. inherently being a part of the minimum salary to be paid. It is submitted that the said grievance was challenged in a separate writ petition i.e. CWP-20487-2021, which was decided and the claim of the petitioner(s) to the extent of Dearness Allowance was declined. Against the said order, LPA No.256 of 2023 was filed wherein the order passed by the Single Bench was modified and the respondents were directed to re-consider the claim of the petitioner for D.A. as well. Thereafter, the said matter is still pending consideration with the respondent-authorities.

5. It is submitted that notwithstanding any of the later developments, in any case, since the order of pay fixation was passed on 09.06.2022, it could not have been used as a means of inflicting punishment on the petitioner for seeking the minimum pay-scale. Besides, the petitioner worked against said post on the terms & conditions as were made available to him until such time that the respondents carry out such modification. The decision of pay fixation could at best be held applicable prospectively and not retrospectively w.e.f. 01.11.2017 and that too for future engagements



and could not be used to the prejudice of the petitioner. The payable salary thus becomes protected. Hence, the recovery could not be effected.

6. Counsel for the State on the other hand defends the action of the respondents and submits that in compliance to the order dated 31.05.2019 passed by the High Court in CWP-15800-2019, Engineer-in-Chief, Irrigation & Water Resources Department, Haryana examined the claim of the petitioner and finding the same justified, passed the speaking order on 16.10.2019. Accordingly, the pay of the petitioner and other similarly placed employees working under outsourcing policy (Part-II) was fixed as Rs.19900/- w.e.f. 01.11.2017 but the said order was not implemented by the then Executive Engineer and the Deputy Superintendent due to which the petitioner continued to draw the higher salary on DC rate, which was revised from time to time, before re-fixation of the pay of the petitioner. When the said fact came to the knowledge of the authorities, strict action was taken against the Executive Engineer and he was charge-sheeted. The pay of the petitioner was re-fixed to the initial pay scale of Rs.19,900/- w.e.f. 01.11.2017. Excess salary paid to the petitioner was calculated to the tune of Rs.2,62,546/- and the respondents being the competent authority has accordingly ordered recovery. It is thus submitted that there is no illegality in the action of the respondent-authorities and that the recovery order has been passed as per law and according to the Rules.

7. When a specific query was put to the State counsel that the reply filed by the respondent-State only refers to the issuance of a charge-



sheet, however, the final outcome of the charge-sheet has not been apprised to this Court, he pleads ignorance. He contends that no one is present from the respondent-Department to assist him. I find that the said plea cannot be accepted by this Court as it is a standard response by the State Government which causes undue delay in the adjudication of proceedings. The instructions are never updated even till the last moment and it is pleaded that the counsel is not being briefed by the department. This Court has no reason to believe that the State counsel would not be telling the truth, but at the same time, the Court proceedings are not at the mercy or pleasure of the department. There is no justification for the department in not updating the State counsel of the later developments or not deputing any responsible person conversant with the facts of the case to brief him on or before the date when the case is listed for arguments. Additionally such an aspect is informed only after the Court has already invested its considerable time in hearing the entire case. It is expected of the department to pay special heed to the pending litigation and to depute officials to assist the counsel representing them on the date(s) when a matter is listed so that every updated information can be furnished. A case is not required to be adjourned every time when a factual aspect is sought to be verified from the State counsel. A litigant cannot be made to suffer for a long period for the convenience of the State or its departments. Hence, this Court has no option but to presume that the charge-sheet did not yield any final outcome against the officer. Even though it is stated in the written statement that a charge-



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sheet was served upon the Executive Engineer and the Deputy Superintendent, however, even the said charge-sheet has not been appended alongwith the reply wherefrom it could be ascertained as to what was the memo of charge served upon the employees and as to whether the same pertained to recovery of any loss, if so occasioned, to State exchequer or not.

8. Further, the respondents have although made a reference to the communication sent by the Engineer-in-Chief on 16.10.2019, however, there is no denial of the fact that the said communication was never addressed to the petitioner and that it is at best an intra-departmental communication. Hence, insofar as the petitioner is concerned, the communication of the office order was made to him only on 09.06.2022 and that he was never made aware of any order having been passed prior thereto.

9. All the above facts apart, undisputedly, there is no concealment of any fact whatsoever on the part of the petitioner and his claim for D.A. is already pending with the respondent-authorities and he belongs to Group 'C'. The said order of recovery has been passed notwithstanding the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab and others v. Rafiq Masih (White Washer) and others**, reported as **(2015) 4 SCC 334**, wherein it was held by the Hon'ble Supreme Court that recovery from Group- 'C' and Group- 'D' employees would not ordinarily be effected once the said payment has been made without their being any concealment or fraud on their part.

10. In the present case, the benefit of the salary at D.C. rates was



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then paid as per the applicable terms & conditions of employment. The decision that is being claimed as taken by the Engineer-in-Chief in 2019 was not implemented by the Executive Engineer, who was the appointing and punishment authority for no fault or attribution to the petitioner.

11. Considering it from the aforesaid perspective and in light of the judgment of the Hon’ble Supreme Court in the matter of **Rafiq Masih (White Washer) and others (supra)**, the present writ petition is allowed. The impugned order dated 09.06.2022 directing recovery of salary w.e.f. 01.11.2017 is accordingly **set aside**.

(VINOD S. BHARDWAJ)
JUDGE

07.03.2025
Mangal Singh

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