

2026:PHHC:020743



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20401-2005
DECIDED ON:22.01.2026

DHARAM SINGH HOODA

.....PETITIONER(S)

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENT(S)

CWP-16488-2004

SURESH CHANDER DUTT

.....PETITIONER(S)

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Randhir Singh Hooda, Advocate
for the petitioner(s) in CWP-20401-2005

None for the petitioner in CWP-16488-2004

Mr. Deepak Balyan, Addl. AG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

Due to continuance absence on the part of the petitioner in CWP-16488-2004 and considering the fact that the instant petition pertains to the year of 2004, it is deemed appropriate the same be got adjudicated on merits.

Accordingly, Ms. Sheena Dahiya, PH-3493-2021/2293/201, 9888241998, is appointed as *Amicus Curiae* to assist the Court. Necessary fee of *Amicus Curiae* shall be paid by the registry of this Court.

By this order, this Court shall dispose of both the aforesaid petitions, as common questions of law are involved therein. To avoid repetition, the facts are being taken from CWP-20401-2005.

Prayer

1. The jurisdiction of this court has been invoked under article 226 of the Constitution of India seeking quashing of order dated 25.06.2025 (Annexure P-5) whereby the benefit granted in pursuance of letter pertaining to the ad-hoc relief withdrawn dated 20.01.1999 (Annexure P-3) was order to be recovered.

Brief Facts

2. The petitioner was appointed as Senior Auditor (now designated as Section Officer) on 30.09.1977 in the S.A.S. (State Accounts Service) cadre and was working as Chief Accounts Officer in the Haryana AIDS Control Society, Panchkula.

3. In 1972, the Government of Haryana granted ad-hoc relief to its employees as an interim measure in view of rising consumer prices. Subsequently, vide decision dated 20.03.1974, the said ad-hoc relief was replaced by Additional Dearness Allowance based on a prescribed formula, resulting in refixation of pay and adjustment of the excess amount paid earlier.

4. After revision of pay scales w.e.f. 01.04.1979, the State decided to withdraw the ad-hoc relief, leading to a cut in Dearness Allowance. Aggrieved by the said action, the Haryana State Accounts Service Association (of which the petitioner was a member) filed CWP No. 13341 of 1990 which was allowed by

this court vide judgment dated 19.12.1990 and ordered restoration of the impugned cut in ad-hoc relief (D.A.) retrospectively w.e.f. 01.04.1979.

5. Separately, the same Association had filed another writ petition, CWP No. 232 of 1990, challenging the same Government decision dated 20.03.1974. This petition, along with a bunch of 268 writ petitions led by CWP No. 16470 of 1990, was dismissed by the High Court vide judgment dated 18.09.1991.

6. The State of Haryana challenged the judgment dated 19.12.1990 in CWP No. 13341 of 1990 by filing SLP No. 2578 of 1996, which was dismissed by the Supreme Court on 09.05.1997, thereby giving finality to the said judgment inter-se the parties. Consequent upon dismissal of the SLP, the benefit of restoration of ad-hoc relief was extended to several similarly situated employees, however, the petitioner was denied the same despite being a member of the Association.

7. The petitioner filed COCP No. 591 of 1998 and vide order dated 11.11.1998 (Annexure P-1), the court held that no contempt was made out but directed the State to implement the judgment in CWP No. 13341 of 1990. The State generalized the benefit vide order dated 20.01.1999 but subsequently withdrew the same vide decision dated 11.03.2004 upon claiming that CWP No. 232 of 1990 had already been dismissed and upheld by the Supreme Court.

8. Hence, this petition.

Contentions

On behalf of the petitioners

9. Learned counsel appearing on behalf of the petitioner has contended that the petitioner was a member of the Haryana State Accounts Service Association (in short as “HSASA”), which had successfully challenged the cut in

ad-hoc relief by filing CWP No. 13341 of 1990, wherein this court directed restoration of the impugned cut retrospectively w.e.f. 01.04.1979 vide judgment dated 19.12.1990, and the said judgment attained finality after dismissal of the State's SLP by the Supreme Court.

10. It is argued that once the issue stood finally adjudicated, the respondents were bound to extend the same benefit to all similarly situated members of the Association, including the petitioner and denial of the benefit to the petitioner, while granting it to other colleagues, is arbitrary and discriminatory.

11. Lastly it is urged that the subsequent withdrawal of benefits and initiation of recovery proceedings vide orders dated 11.03.2004 and 25.06.2004 is illegal and contrary to binding judicial directions.

On behalf of respondents

12. The respondents contend that the benefit of restoration of ad-hoc relief was confined only to the petitioners arrayed in CWP No. 13341 of 1990 and that the petitioner was not a party thereto.

13. It is further argued that the same Association had filed CWP No. 232 of 1990 challenging the very same Government decision dated 20.03.1974, which was dismissed along with a bunch of 268 writ petitions led by CWP No. 16470 of 1990, and the said dismissal was upheld by the Supreme Court.

14. It is submitted that the generalization of the judgment dated 19.12.1990 was under threat of contempt and was later rectified by ordering withdrawal of the benefits. Therefore, the respondents assert that the recovery of excess payment is lawful, justified, and in conformity with the final judgment of the Supreme Court.

Analysis

15. At the outset, it is necessary to note that the controversy in the present writ petition does not arise in a factual vacuum but stands layered with multiple rounds of litigation, culminating orders, and inter-se finality between the parties. The issue, therefore, is not merely whether the Government decision dated 20.03.1974 was valid in abstract, but whether the respondents, having accepted and implemented binding judicial directions qua a defined class of employees, can selectively deny the same benefit to the petitioner and initiate recoveries decades later.

Finality of Judgment in CWP No. 13341 of 1990

16. It is undisputed that CWP No. 13341 of 1990, filed by the Haryana State Accounts Service Association (HSASA), was allowed by this Court vide judgment dated 19.12.1990 directing restoration of the impugned cut in ad-hoc relief retrospectively w.e.f. 01.04.1979. The said judgment was carried in challenge by the State up to the Supreme Court by way of SLP No. 2578 of 1996, which came to be dismissed on 09.05.1997, thereby leave to a clear consequence of law that the judgment dated 19.12.1990 attained finality inter-se the parties.

17. The respondents' attempt to reopen the correctness of the said judgment by relying solely upon dismissal of CWP No. 232 of 1990 is legally impermissible when the law had attained finality qua the petitioners being part of HSASA, after the dismissal of the SLP by the Apex Court itself. Once a judgment has attained finality between the parties, its correctness cannot be collaterally impeached in subsequent proceedings. The doctrine of finality of litigation is an essential facet of rule of law, as repeatedly emphasized by the Supreme Court in ***“Daryao v. State of U.P., AIR 1961 SC 1457”*** while observing that *“It is in the*

interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.”

18. Subsequently, after the dismissal of the Civil appeal against the order in Contempt petition, vide order dated 07.01.1999 (Annexure P-2), the benefit was granted to the petitioner by way of the instructions issued by the Government itself vide order bearing Memo no. 146-TA-HR (18T) 99/665 dated 20.01.1999 (Annexure P-3) after due application of mind. This court is of the opinion that once a relief has been granted and has attained finality, it cannot be withdrawn merely because a different view was taken in another case subsequently. The law declared subsequently may operate prospectively, but cannot unsettle closed matters as held in ***“I.C. Golak Nath v. State of Punjab, (1967) 2 SCR 762”*** wherein an eleven judge bench of the Apex court observed that the prospective operation of a decision is accepted as a part of the constitutional law.

19. Another plea of the respondent, that the petitioner was not individually arrayed as a party in CWP No. 13341 of 1990 is equally untenable. The writ petition was filed by the Association in a representative capacity espousing a common service grievance. The petitioner was admittedly a member of the Association at the relevant time. Once relief was granted to the Association, it enured to the benefit of all its members similarly situated. Selective implementation of such judgment would tantamount to hostile discrimination.

20. In ***“E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3”***, arbitrariness was held to be antithetical to equality. Administrative convenience or

later change of opinion cannot justify hostile discrimination once benefits have been extended to a class of employees.

21. Moreover, the doctrine of legitimate expectation also comes to play. Once the respondents implemented the judgment dated 19.12.1990 after dismissal of the SLP and extended its benefits to similarly situated employees vide order dated 20.01.1999 (Annexure P-3), a legitimate expectation arose in favor of the petitioner that he would also be granted identical treatment. The State, being a model employer, cannot arbitrarily frustrate such expectation without any overriding public interest. The sudden withdrawal of benefits after more than 5 years of implementation vide order dated 11.03.2004 (Annexure P-4), clearly violates this doctrine and renders the impugned action unsustainable.

22. Otherwise also, the respondents are barred by the well-settled doctrine that a party cannot approbate and reprobate. The doctrine of approbate and reprobate, rooted in the equitable maxim *qui approbat non reprobat*, squarely applies. As held by the Supreme Court in “**Joint Action Committee of Airline Pilots’ Association of India v. DGCA (2011) 5 SCC 435**”, a party cannot accept what is favourable while rejecting what is inconvenient under the same transaction or set of facts. Relevant extract of the same is as under:

“11. In R.N. Gosain v. Yashpal Dhir, AIR 1993 Supreme Court 352, this Court observed as under :-

"10 "Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

12. The doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais

(or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

23. Similarly, in ***Rajasthan State Industrial Development & Investment Corporation v. Diamond & Gem Development Corporation (2013) 5 SCC 470***, the Apex Court condemned such conduct as impermissible “blowing hot and cold.” while observing that,

9. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order; he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience.

24. Having accepted, implemented, and acted upon the judgment dated 19.12.1990 by granting benefits to similarly situated employees and by complying with contempt directions, the respondents cannot now turn around and deny the same benefit to the petitioner. A party cannot accept and reject the same instrument or judgment at its convenience. Such conduct strikes at the root of fairness in administrative action and renders the impugned orders arbitrary and unsustainable.

25. The contempt proceedings initiated by the petitioner culminated in an order dated 11.11.1998, wherein this Court specifically directed the respondents to implement the judgment in CWP No. 13341 of 1990. The said direction was upheld by the Division Bench on 07.01.1999. These orders have not been set aside, meaning thereby that the respondents were under a binding judicial mandate to implement the judgment. The subsequent plea that benefits were extended

“under threat of contempt” is wholly misconceived. Compliance with court orders is not a matter of discretion but a constitutional obligation.

Illegality of Recovery After Long Lapse of Time

26. Even otherwise, the impugned recovery orders dated 11.03.2004 and 25.06.2004 cannot be sustained in law. The petitioner is a retired / senior employee against whom no allegation of misrepresentation or fraud is made. Payments, if any, were made by the respondents themselves pursuant to judicial orders.

27. The Supreme Court in “***State of Punjab v. Rafiq Masih (White Washer)***, (2015) 4 SCC 334”, has categorically held that recovery from employees after long lapse of time, particularly when payments were not obtained by fraud or misrepresentation, is impermissible in law, while observing that:

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

28. Further reliance may also be placed on “***Syed Abdul Qadir v. State of Bihar***, 2009(1) S.C.T. 611”, wherein the Apex court discussed that,

27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating

the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

29. In parting, this Court cannot remain oblivious to the manifest inequity in the respondents' action of initiating recovery after a lapse of more than five and a half years, that too in respect of amounts released vide order dated 20.01.1999 pursuant to binding judicial pronouncements, including the judgment dated 19.12.1990 which had attained finality up to the Supreme Court, and further directions issued in contempt proceedings. The payments were neither clandestine nor the result of any misrepresentation on the part of the petitioner, but were consciously extended by the respondents after due consideration and in compliance with court orders. Yet, despite the issue having travelled through multiple rounds of litigation, the petitioner who served the State since 30.09.1977 and had by then complete almost 3 decades of service, was compelled once again to enter the corridors of this Court to defend a benefit already adjudicated upon and duly implemented. Such action not only inflicts avoidable hardship and mental anguish upon an employee, but also results in unnecessary dissipation of public time and the State exchequer in defending indefensible litigation.

30. The State, as a model employer, is expected to act with fairness, consistency, and a sense of responsibility, rather than adopt a course that unsettles

settled rights and multiplies proceedings. The law, equity, and administrative propriety all militate against such belated recoveries, and this Court deprecates the manner in which the petitioner has been made to participate in multiple rounds of litigation repeatedly over an issue that had long since attained finality.

Conclusion

31. Viewed from any angle constitutional, administrative, or equitable, the action of the respondents in denying the benefit of restoration of ad-hoc relief to the petitioner and initiating recovery proceedings is unsustainable.

32. The writ petition, therefore, deserves to be allowed.

33. The impugned orders dated 11.03.2004 and 25.06.2004 are hereby quashed. The respondents are directed to extend to the petitioner the benefit of restoration of ad-hoc relief (D.A.) in terms of the judgment dated 19.12.1990 in CWP No. 13341 of 1990, along with all consequential benefits. Any recovery already effected shall be refunded within a period of three months.

34. Ordered accordingly. Pending applications, if any, stand disposed of.

(SANDEEP MOUDGIL)
JUDGE

22.01.2026

Meenu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No