

255

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26095-2024

Decided on: 25.03.2026

DEEPAK KUMAR

...PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Nishant Maini, Advocate for the petitioner.

Mr. Teevar Sharma, DAG Haryana

SANDEEP MOUDGIL, J

Prayer

1. The present petition has been instituted under Article 226 of the Constitution of India, seeking quashing of impugned order dated 05.09.2024, endorsed on 27.09.2024 (Annexure P-15). Vide the said order, respondent no. 3 has directed recovery of an amount of Rs. 53,604/- from the petitioner, being one month's salary already in lieu of Leave Travel Concession (LTC), which had been granted to the petitioner more than a year prior thereto. The said recovery has been ordered by placing reliance upon instructions dated 21.04.2010 (Annexure P-7) and 14.02.2023 (Annexure P-8)

Brief Facts

2. The present writ petition arises out of the action of the respondents directing recovery of an amount of ₹53,604/- from the petitioner on account of Leave Travel Concession (LTC). The petitioner, Deepak Kumar, has been

working as an Information, Education & Communication and Equity Consultant on a contractual basis since the year 2012, with his contract being renewed annually.

3. In the year 2023, the petitioner applied for and was granted one month's salary in lieu of LTC, in terms of the prevailing Government instructions dated 21.04.2010 and 14.02.2023, which permitted such benefit to contractual employees who had completed more than four years of service. Pursuant to due approval by the competent authority, the amount of ₹53,604/- was sanctioned and disbursed to the petitioner on 17.05.2023.

4. Subsequently, the respondents issued a show cause notice dated 13.06.2024 proposing recovery of the said amount on the basis of later instructions dated 01.06.2023 and communication dated 21.05.2024, whereby LTC benefit was stated to be inadmissible to certain categories of contractual employees. Despite the petitioner submitting a detailed reply contending that the benefit had been validly granted under the then applicable policy and that the subsequent instructions could not be applied retrospectively, Respondent No. 3 passed the impugned order dated 05.09.2024 (endorsed on 27.09.2024) directing recovery of the said amount in installments.

5. Hence, this petition.

Contentions

On behalf of petitioner

6. Learned counsel for the petitioner contends that the impugned order dated 05.09.2024, directing recovery of ₹53,604/-, is wholly arbitrary, illegal, and liable to be quashed. It is argued that the petitioner was validly granted one month's salary in lieu of LTC in May 2023 strictly in accordance with the

prevailing Government instructions dated 21.04.2010 and 14.02.2023, which clearly entitled contractual employees, who had completed more than four years of service, to such benefit. The petitioner, having been in continuous contractual service since the year 2012, squarely fell within the ambit of the said policy.

7. It is further contended that the subsequent instructions dated 01.06.2023 and clarification dated 21.05.2024, relied upon by the respondents, are prospective in nature and do not provide for retrospective recovery of benefits already granted. The action of the respondents in applying these later instructions retrospectively is thus impermissible in law. Learned counsel further submits that there was no misrepresentation, fraud, or concealment on the part of the petitioner, and the benefit was granted after due approval by the competent authority.

On behalf of respondents

Per contra, learned counsel for the respondents submits that the impugned order has been passed strictly in accordance with the applicable Government instructions and does not suffer from any illegality. It is argued that the petitioner is a contractual employee engaged under a Centrally Sponsored Scheme and, therefore, is not entitled to LTC benefits in view of the instructions dated 01.06.2023 and subsequent clarification dated 21.05.2024 issued by the Chief Secretary to Government, Haryana.

It is further contended that the amount of ₹53,604/- was wrongly sanctioned to the petitioner due to an incorrect interpretation of the applicable rules, and once the mistake came to light, the department was well within its authority to rectify the same and recover the excess payment. Learned counsel

submits that a show cause notice was duly issued to the petitioner, and his reply was considered before passing the impugned order, thereby complying with principles of natural justice. It is also argued that public funds cannot be allowed to be retained by an employee if the same have been disbursed contrary to governing instructions, and the department is duty-bound to recover such amounts.

10. Heard.

Issue for Consideration:

Whether the respondents are legally justified in directing recovery of ₹53,604/- from the petitioner, representing one month's salary granted in lieu of LTC, after a lapse of more than one year, on the basis of subsequent executive instructions, in the absence of any misrepresentation or fraud on the part of the petitioner.

Analysis

11. The controversy, when stripped to its essentials, turns on the interplay between accrued rights under a prevailing policy and the subsequent change in executive instructions. The facts are not in dispute. The petitioner, a contractual employee in continuous service since the year 2012, was granted the benefit of one month's salary in lieu of LTC in May 2023 under instructions dated 21.04.2010 and 14.02.2023 then holding the field. The grant was sanctioned by the competent authority upon due consideration.

12. The respondents seek to undo this position by invoking later instructions dated 01.06.2023 and 21.05.2024, contending that contractual employees under Centrally Sponsored Schemes are not entitled to such benefit. Therefore, the question is not merely one of entitlement, but of the

legality of retrospective deprivation of benefits coupled with recovery.

13. It is a settled canon of administrative law that executive instructions are presumed to operate prospectively unless a contrary intention is clearly manifested. No such intention is discernible in the instructions relied upon by the respondents. To permit retrospective application in the present case would be to unsettle a benefit validly conferred and acted upon, thereby offending the principle of legal certainty, which is an integral facet of the rule of law.

14. Equally, the law on recovery of excess payments is no longer res integra. In ***State of Punjab vs. Rafiq Masih (2015) 4 SCC 334***, the Supreme Court authoritatively held that recovery from an employee is impermissible where the excess payment is not attributable to any misrepresentation or fraud on the part of the employee, particularly where such recovery is sought after a lapse of time. Relevant extract is as under:

“7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the

interference at the hands of this Court.

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.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimising monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate

standard of life, and by promoting economic interests of the weaker sections.

10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all Governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.”

The present case falls squarely within this protected category. The petitioner neither induced the grant nor misrepresented his entitlement and the payment was made upon a conscious administrative decision.

15. The respondents’ argument, that public funds must be safeguarded, though facially attractive, cannot be stretched to legitimise actions that are ex facie arbitrary. Public law does not countenance the shifting of administrative lapses onto an employee who is blameless. Equity, in such circumstances, tilts decisively in favour of the employee.

16. Otherwise also, dealing with the subject of the action being iniquitous, it can be concluded that when the excess unauthorised payment is

detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. Examining a similar proposition, this Court in ***Col. B.J. Akkara v. Government of India, (2006) 11 SCC 709***, observed as under :

"28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

17. A perusal of the aforesaid observations made by the apex Court in ***Col. B.J. Akkara's case (supra)*** reveals a reiteration of the legal position, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, the Apex Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them.

18. Viewed thus, the impugned action suffers from infirmity as not only does it gives retrospective operation to instructions which are plainly prospective, but also violates the settled prohibition against recovery in the absence of fault; and third, it fails the test of reasoned decision-making.

Conclusion

19. In these circumstances, the conclusion is inescapable that the recovery directed against the petitioner is legally unsustainable and cannot be permitted to stand.

18. Accordingly, the writ petition is allowed. The impugned order 05.09.2024 (Annexure P-15), directing recovery of Rs. 53,604/- from the petitioner is hereby set aside. Consequently, the respondents are refrained from effecting any recovery pursuant thereto.

19. Pending applications, if any, stand disposed of

(SANDEEP MOUDGIL)
JUDGE

25.03.2026
Meenu

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