

**(2022) 05 J&K CK 0017**

**In the Jammu And Kashmir High Court**

**Case No : Writ Petition (C) No. 174 Of 2021(O&M)**

Amar Singh Yadav

APPELLANT

Vs

Union Of India And Others

RESPONDENT

**Date of Decision : 09-05-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 142

**Citation : (2022) 05 J&K CK 0017**

**Hon'ble Judges : Rajnesh Oswal, J**

**Bench : Single Bench**

**Advocate : Ankesh Chandel, Vishal Sharma**

## **Judgement**

Rajnesh Oswal, J

1. The petitioner is aggrieved of the office order A No. 03/2019-20/242-Accounts dated 17.01.2020 issued by respondent No. 4 whereby recovery of Rs. 3,54,098/-, on account of Children Education Allowance (CEA) reimbursed to the petitioner, has been ordered to be effected from the monthly salary of the petitioner and also of the order dated 04.03.2020 by virtue of which, the petitioner has been informed that 30 monthly installments comprising of 29 installments of Rs. 11,804/- each and last installment of Rs. 11,782/- shall be recovered from the salary of the petitioner w.e.f. February, 2020. The petitioner has also prayed for issuance of directions to the respondents to refund the amount deducted from the salary of the petitioner w.e.f. February 2020.

2. The petitioner has filed the writ petition on the grounds that the CEA with respect to his two children out of four children has been rightly claimed by the petitioner and the respondents have rightly reimbursed the same in favour of the petitioner. Abrupt recovery of the Children Education Allowance from the salary of the petitioner by the respondents is based upon wrong and incorrect appreciation of the spirit of the Office Memorandum No. 12011/03/2008-Estt. (Allowance) dated 02.09.2008. The petitioner has rightly claimed the CEA

reimbursement with respect to his two children, therefore, the respondents are not legally justified in effecting recovery of the CEA reimbursement made in favour of the petitioner. It is further stated that the orders impugned are liable to be quashed on the ground of violation of principle of natural justice, as no opportunity of being heard has been afforded to the petitioner before passing the orders impugned. It is stated that the appeal preferred by the petitioner against the order dated 17.01.2020 has not been decided till date and also the decision of the appeal filed by the petitioner has not been communicated to the petitioner till date. It is further stated that the impugned orders are visiting the petitioner with penal consequences inasmuch as despite being fully entitled to Children Education Allowance reimbursement and reimbursement having been rightly made in favour of the petitioner, the respondents cannot recover the same back from the petitioner on the totally wrong and erroneous ground that the CEA reimbursement could have been claimed by the petitioner with respect to his two eldest children and not the younger children. The petitioner has placed on record the orders impugned and various communications.

3. Response stands filed by the respondents in which it has been stated that the petitioner has drawn Children Education Allowance(CEA) with effect from 01.04.2009 to 31.03.2019 as Rs. 3,54,098/-. As per clarification given in G.I. of per. and Trg, O. M. No. 12011/16/2009-(Allowance) dated 13.11.2009, the CEA can be claimed for two elder surviving children only and CEA drawn by the petitioner for his younger children, namely, Komal Yadav and Jacky Yadav is not admissible to him. An order dated 17.01.2020 for recovery of Rs. 3,54,098/- was issued and before issuing the recovery, he was asked to explain under what circumstances he has drawn the Children Education Allowance. A reminder was also issued to the petitioner, but he did not reply and finally an order of recovery of Rs. 3,54,098/- was issued. The petitioner then appealed against the said order in appeal before DIGP GC CRPF, Hiranagar on 14.02.2020 which was considered and rejected by the DIG GC CRPF Hiranagar vide order dated 04.03.2020 and thereafter, the petitioner submitted demand for justice notice dated 20.07.2020 and same was replied by the Range Hiranagar vide letter dated 01.09.2020. Range Hiranagar has clarified that the order for recovery of CEA is justified and as per provision of law.

4. Mr. Ankesh Chandel, learned counsel appearing for the petitioner has vehemently argued that the recovery of Children Education Allowance cannot be effected from the petitioner as the same was duly sanctioned by the respondents and if the petitioner was not entitled to the allowance, the respondents could have refused to sanction the same. The petitioner is in fact Group-C employee, therefore, as per law laid down by the Apex Court in State of Punjab and others v Rafiq Masih (White Washer) etc, 2015 (4) SCC 334, the recovery cannot be effected from the petitioner.

5. Per contra, Mr. Vishal Sharma, learned Assistant Solicitor General of India has vehemently argued that the petitioner was not entitled to Children Education

Allowance for his 3rd and 4th child in view of the Circular issued by the Department dated 13.11.2009, therefore, there is no illegality in passing the orders impugned.

6. Heard and perused the record.

7. Before appreciating the rival contention of the parties, it is apt to take note of the various pronouncements of Hon'ble Supreme Court regarding the issue involved in the present writ petition.

8. In *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18, Hon'ble the Supreme Court restrained recovery of payment of excess amount paid on account of wrong interpretation of order and it was held as under :

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

9. In *State of Punjab v. Rafiq Masih*, reported in (2015) 4 SCC 334, the Apex Court has held as under:

10. In view of the aforestated 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.

18. 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 hereinabove, we may, as a ready reference, summarise

the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.

10. In its latest decision in *Thomas Daniel v State of Kerala and others* bearing Civil Appeal No. 7115 of 2010, decided on May 2nd, 2022, while reiterating its earlier pronouncements, the Apex Court has observed as under:

"Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General."

11. Thus, from the law laid down by the Apex Court, it is evident that if the benefits have been derived by the employee by mis-representation or fraud, then the Employer can order the recovery of the same from employee. Also it is evident that the Hon'ble Apex Court has held that even in cases not specifically covered by its judgment, if the court comes to the conclusion that recovery from the employee would be iniquitous or harsh or arbitrary, the same can be stopped by the court.

12. So far as instant case is concerned, the petitioner is working as constable with the Central Reserve Police Force. A perusal of the order impugned dated 17.01.2020 reveals that the CEA paid to the petitioner right from 01.04.2009 to 31.03.2019 has been duly sanctioned by the department. It is also mentioned in the order impugned that the sanction orders issued in favour of the petitioner have been rendered invalid vide order dated 17.01.2020. So far as case of the petitioner is concerned, it is not that the petitioner has himself drawn some amount but rather the Children Education Allowance (CEA) was sanctioned by the respondents despite the fact that the Government had issued Circular dated

13.11.2009 that the CEA will be admissible for two elder surviving children only. The necessity to issue clarification dated 13.11.2009 arose only because the department was flooded with references seeking clarification whether children allowance can be claimed in respect of any children by Government servants who have more than two children, as is evident from the clarification itself. The respondents may or may not have been aware of the clarification but the fact remains that the respondents continued to sanction the children education allowance to the petitioner despite issuance of clarification. If the respondents were aware of the clarification then the respondents were at fault by issuing sanction for the reimbursement of Child Education Allowance and if they were not aware of the clarification, then how the respondents can expect the petitioner, who is constable, to be aware of the same. There are no allegations that there was any mis-representation or fraud on the part of the petitioner. Rather it is the contention of the respondents that the petitioner has wrongly drawn the benefit of CEA. This contention is mis-conceived as the clarification was issued only for the purpose of removing ambiguity existing in the order dated 02.09.2008. The respondents could have refused the sanction of CEA to the petitioner on the basis of order dated 13.11.2009 but they continued to accept the claim of the petitioner with regard to the Children Education Allowance for ten long years and now the respondents cannot deduct the same from the salary of the petitioner particularly in view of the fact that the petitioner is constable having four children and it would cause extreme financial hardship to the petitioner.

13. In view of all what has been discussed above, the present petition has merit. The orders impugned dated 17.01.2020 and 04.03.2020 are quashed and the respondents are directed to refund the amount deducted from the salary of the petitioner, with effect from February, 2020 pursuant to the orders impugned within a period of three months from the date a copy of this order is made available to the respondents by the petitioner.