

(2022) 12 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 5459, 5461 Of 2020

Bihari Lal And Others

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 12-12-2022

Acts Referred:

Citation : (2022) 12 SHI CK 0031

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : P.P.Chauhan, Desh Raj Thakur, Manoj Bagga

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. In both these petitions, petitioners have sought identical relief i.e. quashing of letter dated 03.10.2018 (Annexure A-1), individually received by both the petitioners from the Executive Engineer, Shimla Division No.1, HPPWD, Shimla, whereby both of them were asked to refund the excess amount found to be recoverable from them after re-fixation of their respective salaries.

2. In the case of petitioner in CWPOA No. 5459 of 2020, a sum of Rs.50,217/- was sought to be recovered and in the case of petitioner in CWPOA No.5461 of 2020, a sum of Rs.47,225/- was sought to be recovered.

3. Petitioner in CWPOA No. 5459 of 2020 was initially appointed as Mason on 01.01.1994 and the petitioner in CWPOA No. 5461 of 2020 was appointed as Work Inspector w.e.f.01.01.1998. Both were given placements in the first stage as Technician Grade-II and thereafter as Technician Grade-I.

4. The petitioners were entitled for benefits of Assured Career Progression Scheme (for short. 'ACPS') on completion of 8, 16, 24 and 32 years of service. The State, subsequently introduced another ACPS whereby the incumbents were given the benefits on completion of 4, 9, 14 years of service in the same cadre.

Petitioner in CWPOA No. 5459 of 2020 was given the benefit of ACPS after 9 years of service and petitioner in CWPOA No. 5461 of 2020 was given such benefit after 8 years of service. These benefits were granted to the petitioners before 20.11.2013.

5. The respondents, vide impugned order dated 03.10.2018 (Annexure A-1) ordered the withdrawal of the benefits of ACPS earlier granted to the petitioners.

6. Simultaneously, the recovery of excess amount paid to the petitioners were also directed, as noticed above.

7. Petitioners have also sought the aid of judgment passed by a Division Bench of this Court on 24.03.2022 in CWPOA No. 3145 of 2019, titled S.S. Chaudhary vs. State of H.P. and others, alongwith connected matters, wherein, following the principles laid down in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others (2015) 4 SCC 334 (2), certain situations have been culled out in which the recovery of amount from a Government employee has been held to be impermissible. The Hon'ble Division Bench of this Court has held as under:

"35. In view of the aforesaid discussion, as held by Hon'ble Supreme Court in Rafiq Masih's case (supra), it is not possible to postulate all situations of hardship, where payments have mistakenly been made by the employer, yet in the following situations, recovery by the employer 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.

(vi) Recovery on the basis of undertaking from the employees essentially has to be confined to Class-I/Group-A and Class-II/Group-B, but even then, the Court may be required to see whether the recovery would be iniquitous, harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

(vii) Recovery from the employees belonging to Class-III and Class-IV even on

the basis of undertaking is impermissible.

(viii) The aforesaid categories of cases are by way of illustration and it may not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible guidelines or rigid formula and to give any exhaustive list of myriad kinds of cases. Therefore, each of such cases would be required to be decided on its own merit.”

8. It is not denied that the petitioners belong to Class-III service of the State Government. Moreover, the recovery has been sought to be made from them after more than five years of its disbursement. In such view of the matter, their case is squarely covered under Clauses (i) and (iii) of para-35 of the aforesaid noted judgment (supra). The recovery at such belated stage will otherwise be iniquitous and harsh.

9. In view of above discussion, letter dated 03.10.2018 (Annexure A-1) issued by respondent No.3 in both the cases are quashed and set-aside.

10. The petitions stand disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.