
(2023) 12 SHI CK 0047

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3158 Of 2023

Ishwar Dass Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Citation : (2023) 12 SHI CK 0047

Hon'ble Judges : Bipin Chander Negi, J

Bench : Single Bench

Advocate : Onkar Jairath, Anup Rattan, Rahul Thakur

Final Decision : Allowed

Judgement

Bipin Chander Negi, J

1. Learned counsel for the petitioner has preferred the present petition seeking following substantive reliefs:-

“(i) That a writ of certiorari or any other appropriate writ order or directions may kindly be issued for quashing and setting aside the Impugned action of the Respondents whereby recovery has been affected from the Petitioner in an illegal manner against the law laid down by the Hon’ble Supreme Court of India and reiterated by this Hon’ble Court in S.S. Chaudhary’s case.

(ii) That a writ of mandamus or any other appropriate writ, order or direction may kindly be issued directing the Respondents to refund the illegally recovered amount to the petitioner, along with interest @ 12% per annum.”

2. The petitioner had retired from the post of Junior Assistant, admittedly, a Class-III post, on attaining the age of superannuation, on 30.11.2016. Post retirement of the petitioner, pay fixation was made vide order Pension/DCRG payment order No.PEN616/P/16/10/60154720 dated 24.12.2016. As a consequence thereof, an amount of Rs.1,16,271/- (One lac sixteen thousand two hundred and seventy one) was recovered from the balance payment of Leave

Encashment, on 06.09.2017 post retirement of the petitioner.

3. From the aforesaid facts and attending circumstances, it is evident that the recovery in the case at hand has been effected from a Class -III employee. Moreover, recovery has been made post retirement of the petitioner, therefore, recovery could not have otherwise been effected.

4. More particularly, in the light of the judgment rendered by the Hon'ble Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer) and others, AIR 2015 SC 696, which in turn, has been relied upon by this Court in CWPOA No.3145 of 2019, titled S.S. Chaudhary vs. State of H.P. and others, decided on 24.03.2022, wherein the Court has laid down the following parameters:-

"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 be 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 ClassI/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 ClassIII 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 channelized 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.”

5. Accordingly, present petition is allowed and the recovery effected on 06.09.2017 from the Leave Encashment due to the petitioner to the tune of Rs.1,16,271/- (One lac sixteen thousand two hundred and seventy one), is ordered to be quashed and set aside. The respondents are directed to refund the amount of recovery, so effected, on or before 31.01.2024, failing which, the respondents would be liable to pay interest @ of 9% per annum till its realization.

Pending miscellaneous application(s), if any, shall also stand disposed of.