
(2020) 08 SHI CK 0208
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 2140 Of 2020

Madan Lal	Vs	APPELLANT
State Of Himachal Pradesh And Ors		RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Citation : (2020) 08 SHI CK 0208

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : A.K. Gupta, Ashok Sharma, Arvind Sharma

Final Decision : Allowed

Judgement

Sandeep Sharma, J

Through Video Conferencing

1. Petitioner though was initially engaged as daily wager on muster roll basis to carry out various seasonal forestry works in Sarahan Range of

Rajgarh Forest Division w.e.f. 6.12.1988, but subsequently, he was regularized on the post of peon w.e.f. 28.7.2006 in terms of policy framed by the

State Government for regularization. By way of CWP No. 3796/2010 titled Basti Ram v. State of HP and Ors, petitioner along with other similarly

situate persons prayed that respondent be directed to grant work charge status to them from the date they completed 10 years of service with all

benefits incidental thereof such as full back wages, seniority and pay fixation etc. Aforesaid writ petition having been filed by the petitioner along with

other similarly situate persons subsequently came to be disposed of vide judgment dated 6.7.2010 passed by the Division Bench of this court on the

statement having been made by the counsel representing the petitioner that

issue raised by them is squarely covered in case titled Gauri Dutt v. State of HP, latest HLJ 2008 (HP) 366. Having taken note of the aforesaid statement made by the petitioner, this court while disposing of the petition, reserved liberty to the petitioner to file separate representations with further direction to the respondents to consider the same within a period of two months in accordance with law.

2. Present petitioner pursuant to aforesaid order filed representation, praying therein for consideration of his case for grant of work charge status from the date he completed ten years of service with all the benefits incidental thereof in terms of judgment rendered by the Honâ??ble Apex Court in case titled Mool Raj Upadhaya v. State of HP. Case of the petitioner was considered by the Principal Chief Conservator of Forests, H.P. and he was granted the work charge status w.e.f 1.1.2001 to 31.5.2011. Arrears on account of grant of work charge status of entire period w.e.f. 1.1.2001 to 31.5.2011 on the basis of clarification from the Finance Department, Government of Himachal Pradesh, conveyed by Additional Chief Secretary (Forests) to the Government of Himachal Pradesh vide letter dated 11.7.2011 was calculated to the tune of Rs. 3, 42,685/- and the financial sanction to the tune of Rs. 2,79,351/- was conveyed vide letter dated 29.3.2012. Petitioner was paid first installment of arrear amounting to Rs. 55,870/- during March, 2012 and second installment of Rs. 55,870/- was paid in October, 2013 totaling to Rs. 1,11,740/- .

3. Approximately after two years of release of second installment in October, 2013, the Divisional Forest Officer Rajgarh Forest Division Rajgarh vide communication dated 14.5.2015 issued notice regarding refund of excess amount paid to the petitioner on account of arrears after his being granted work charge status. Vide aforesaid notice, petitioner was apprised that in view of the clarification of Finance Department regarding the payment of arrear of work charge status, issued vide letter dated 8.3.2013, sum of Rs. 63,959/- is recoverable from him and same shall be recovered from his salary in 63 equal installments of Rs. 1000/- p.m. and final installment of Rs. 959/-. In the aforesaid background, being aggrieved with issuance of aforesaid recovery notice, petitioner approached the Erstwhile HP State Administrative Tribunal by way of OA bearing No. 2586 of 2017, praying therein for following main relief:-

â??a. That Annexure P-3 may be set-aside/quashed.â??

After abolition of the Tribunal, matter now stands transferred to this Court for adjudication.

4. Having heard learned counsel for the parties and perused material available on record, this Court finds that representation having been filed by the petitioner pursuant to judgment dated 6.7.2010, passed by the Division Bench of this Court was allowed, as a consequence of which, he was granted work charge status w.e.f. 1.1.2001 to 31.5.2011. Arrears on account of grant of work charge status with respect to aforesaid period i.e. 1.1.2001 to 31.5.2011 were also ordered to be released in favour of the petitioner on the basis of clarification issued by the Finance Department vide communication dated 11.7.2011. Though final sanction to the tune of Rs. 2,79,351/- was conveyed in the case of the petitioner on account of grant of work charge status, but he was paid sum of Rs. 1,11,740/- by way of two equal installments. It is not in dispute that petitioner is otherwise eligible for amount as was sanctioned in his favour vide communication dated 29.3.2012, on account of his being conferred work charge status w.e.f. 1.1.2001 to 31.5.2011, but as per latest instructions of Finance Department conveyed vide letter dated 8.3.2013, arrears in excess of three years period so released are stated to be recoverable from the petitioner.

5. With a view to justify the action of the respondent in as much as issuance of impugned notice of recovery, Mr. Arvind Sharma, learned Additional

Advocate General, while inviting attention of this Court to the judgment passed by Honâ??ble Apex Court in *Jai Dev Gupta v. State of HP and Ors.*

AIR 98 SC 2819 contends that in terms of aforesaid judgment government is not liable to pay arrears, if any, in excess of three years, but aforesaid

judgment cannot be made ground for effecting the recovery in case of the petitioner, who at no point of time mis-represented to the department while

claiming work charge status w.e.f. 1.1.2001 to 31.5.2011, to which he has been otherwise held entitled by the respondent vide order dated 15.3.2011.

6. Honâ??ble Apex Court in case titled *State of Punjab vs. Rafiq Masih*, (2015)14 Supreme Court Cases 334, has categorically held that recovery

from the retired employees or employees, who are due to retire is impermissible, especially when there was no misrepresentation, if any, on the part of

the person concerned at the time of claiming benefit in his/her favour. In the

case at hand, though petitioner was appointed on daily wage basis on 6.12.1998, but despite his being eligible he was conferred work charge status on 15.3.2011 that too after passing of judgment dated 6.7.2020 passed by this Court. While filing representation in terms of aforesaid judgment rendered by the Division Bench of this Court, petitioner neither twisted the facts of the case nor misrepresented, rather rightly claimed before the authority concerned that he is entitled for conferment of work charge status w.e.f 1.1.2001 to 31.5.2011 in terms of judgment rendered by the Honâ??ble Apex Court in Mool Raj Upadhayaâ??s case. Respondent department having found the petitionerâ??s claim genuine granted him work charge status w.e.f. 1.1.2001 to 31.5.2011. It is the respondent department, who after having received clarification from the Finance Department held the petitioner entitled to sum of Rs. 2,79,391 on account of grant of work charge status.

7. Honâ??ble Apex Court in subsequent judgment dated 29.7.2016 passed in case titled High Court of Punjab and Haryana and another versus Jagdev Singh, has clarified that principle enunciated in Rafiq Masihâ??s Case that recovery from the retired employees or employees, who are due to retire is impermissible cannot be made applicable to the situation where the officer to whom payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. In the aforesaid judgment Honâ??ble Apex Court has held that if the officer has furnished an undertaking while opting for the revised pay scale, he/she is bound by the undertaking given by him/her. At this stage, it would be relevant to reproduce paras No. 9 to 11 of the aforesaid judgment, which read as under:-

â??9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess

payment, if any, made.

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc¹. this Court held that while it is not possible to postulate all situations of

hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible

in law:

â??(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.â?? (emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom

the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be

refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertakingâ??.

8. Careful perusal of aforesaid judgment rendered by the Honâ??ble Apex Court clearly suggests that principle laid down by the Honâ??ble Apex

Court in Rafiq Masihâ??s case supra that recovery from employee belonging to Class-II and Class-IV service (or Group C and Group D service)

would be impermissible in law, still holds good. In the subsequent judgment rendered by the Honâ??ble Apex Court in High Court of Punjab and

Haryana v. Jagdev Singhâ??s case (supra), it has only clarified that recovery from those retired employees or who are due to retire within one year,

of the order of recovery shall be permissible who had given undertaking at the time of taking benefit that any payment if found in excess would be

liable to adjusted. In the present case, it is not in dispute that petitioner is a Class-IV employee coupled with the fact that no undertaking was ever

obtained from him while holding him entitled for grant of arrears on account of conferment of work charge status and as such, recovery notice

Annexure P-3 is not sustainable. Otherwise also, petitioner, who is a class-IV employee cannot be expected to refund the amount to which he is

otherwise entitled that too after an inordinate delay of seven years.

9. Consequently, in view of the detailed discussion made herein above as well as law relied upon, present petition is allowed and recovery notice dated

14.5.2015, (Annexure P-3) is set-aside. Accordingly, present petition is disposed of so also pending application(s), if any.