

(2016) 07 RAJ CK 0097

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3008 of 2005

Ramesh Chand

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 WLCRajUC 349

Hon'ble Judges : Mr. Anupinder Singh Grewal, J.

Bench : Single Bench

Advocate : Mr. J.P. Goyal, Senior Advocate Assisted by Ms. Varini Bhardwaj, Counsel, for the Petitioner; Mr. Dharmendra Pareek, Addl. G.C, for the Respondents

Final Decision : Allowed

Judgement

Mr. Anupinder Singh Grewal, J.—The petitioner has challenged the orders dated 29.09.2003 (Annexure-5) and 01.10.2003 (Annexure-6) whereby recovery of Rs. 54,290/- was sought to be effected from the petitioner.

2. The petitioner was appointed as Pump Driver in the Horticulture Department on 01.02.1963. He was declared semi permanent vide order dated 01.02.1965. Later he was transferred from Horticulture Department to Motor Garage as driver and posted at Bharatpur Collectorate. He retired after attaining the age of superannuation on 31.07.2003. Vide the impugned orders, recovery is being sought for the amount paid to him in excess on account of selection grade which was granted on 11.03.1999.

3. It has been held by the Supreme Court in the case of State of Punjab v. Rafiq Masih 2015(4) SCC 334 that although it is permissible for the employer to effect recovery in case excess or over-payment has been made to the employee but five exceptions have been carved out wherein the recovery cannot be effected. The relevant part of the judgment is reproduced hereunder:

"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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.

4. Indisputably, the petitioner was working as class-III employee and the recovery is being effected after his retirement. The case of the petitioner would clearly fall under exceptions (i) & (ii). Therefore, the impugned orders effecting the recovery are unsustainable in law.

5. In the result the petition is allowed and the impugned orders 29.09.2003 (Annexure-5) and 01.10.2003 (Annexure-6) are set aside.