
(2016) 12 P&H CK 0085
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8534 of 2016 (O&M)

Satish Manchanda

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Citation : (2017) 1 LawHerald 69

Hon'ble Judges : Mr. Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Ms. Shruti Jain Goyal, AAG, Haryana and Mr. Mahabir Singh Sindhu, Advocate, for the Respondent Nos. 3 and 4; Mr. Sumit Sangwan, Advocate, for the Petitioner

Final Decision : Partly Allowed

Judgement

Rajiv Narain Raina, J. (Oral) - The petitioners are retired Readers Grade-I & Grade-II who superannuated from the Sessions Division, Bhiwani in the year 2012.

2. In view of the undertakings placed in the written statement filed by the High Court at Annex R-3/2 and Annex R-3/3 this writ petition has to be dismissed in view of the declaration of law in High Court of Punjab and Haryana and others v. Jagdev Singh, AIR 2016 SC 3523 where the Supreme Court was dealing with excess payments towards salary and recoveries from employees even where there was no fraud committed or misrepresentation made by the employees. The Supreme Court has explained direction (ii) in State of Punjab and others v. Rafiq Masih (White Washer) etc., AIR 2015 SC 696 and distinguished the same in cases where officers have furnished undertakings while opting for the revised pay scale then they are bound by the undertaking. The case cannot be distinguished on the specious plea that this case involves additional increments while the case before the Supreme Court was of revised pay scale. The principle would not change when a case of excess payment and recovery arises then the payments have to be refunded but in easy instalments.

3. Learned counsel for the petitioners submits that undertakings were given in 2008 while the instructions dated July 15, 2010 (P-8) came subsequently. Para 8 of the instructions is referred to which prescribes that those employees who are in receipt of additional increments wrongly, due to misinterpretation of advance increment as additional increment; henceforth these increments shall be merged into the normal increments, but no recovery shall be effected.

4. It is pointed out by Mr. Mahabir Sindhu, learned counsel appearing for the High Court that these instructions do not apply as against undertakings already given while the benefit was granted to the petitioners on the basis of circular dated August 03, 2005 and particularly Clause-7 thereof which was subsequently clarified vide circular dated March 18, 2013 while holding that advance increment never means additional increment. Therefore, only advance increment can be allowed in eligible cases. He contends that the petitioners mix up the two elements of advance increment with additional increment wherein the fallacy lies. Moreover, the petitioners agreed to refund the excess payments in ten equal instalments and the amounts have been refunded by the petitioners. This sets the matter to rest and accordingly, the petition has no life and deserves to be dismissed.

5. Per contra, it is urged by learned counsel for the petitioners that undue hardship has been occasioned to the petitioners who were low salaried employees in Class III service because of the recovery and the petitioners were not at fault when the amounts were paid to them which have been withdrawn arbitrarily.

6. This may be a debatable issue as far as low salaried employees are concerned but the petitioners retired from the rank and status of Readers Grade I & II on the establishment of the Sessions Division and were Class-III employees on retirement.

7. Counsel further argues that there can be no estoppel against law and the petitioners cannot be pinned down for enforcement of promise made contrary to law, because no one can be compelled to act against the statute. He relies on a Division Bench decision of this Court rendered in *Surender v. State of Haryana and others*, 2013 (4) RCR (Civil) 320 and on the point of hardship, the decision of the Supreme Court in *Paras Nath Singh v. State of Bihar and others*, (2009) 6 SCC 314 which is a case of wrong promotion and recovery of excess amount paid as salary during the wrongful incumbency on higher post. A wrong promotion brings with it duty discharged on the higher post and, therefore, a lenient view was possible that amount should not have been recovered which was earned by discharging duties attached to the promotional post though wrongful. That was a wrong committed by the employer for which the employee should not be disadvantaged by recovery of difference of pay. Therefore, the ruling in *Paras Nath Singh* is distinguishable on facts.

8. It is further argued by Mr. Sangwan that Jagdev Singh is a binding

interpretation of direction (ii) in Rafiq Masih but the case of the petitioners falls in direction (i) which makes it impermissible for recovery from employees belonging to Class-III and Class-IV service and Group-C and Group-D service. This direction may not help the petitioners since recovery stands effected and they are in past tense. The reason why I would not accept the contention of the petitioners that their case falls independently under direction (i) in Rafiq Masih is that this direction is addressed to serving employees while direction (ii) is for retired employees. The five directions have to be read harmoniously and in different situations and being retired employees, the petitioners' cases would fall in direction (ii) and to operate direction (ii) recovery can be made where undertakings are given because of the ratio in Jagdev Singh.

9. Having reached thus far, learned counsel for the petitioners takes out from his armoury the fatal blow on the respondents case, arguing that recovery is impermissible in view of direction (iii) in Rafiq Masih which reads:-

"recovery from employees, when excess payment has been made for a period in excess of five years before the order of recovery is issued"

This is all very interesting while circumnavigating the directions in Rafiq Masih and finding the right path forward.

10. To understand the drift of this contention based on direction (iii), a few facts may be necessary. The petitioners were granted the additional increment on April 01, 2003 and continued to reap the benefit till they retired in 2012. It appears that the Administrative Department in the Government of Haryana sought advice from the Finance Department in connection with the issue raised in CWP No. 10659 of 2010, Haryana Judicial Employees Association v. State of Haryana and others. The Finance Department advised on point No. 1 in Administrative Department letter dated October 20, 2011 that the advance increment will be provided but advance increment never means additional increment. They are two different benefits. Therefore, only advance increment can be allowed in such eligible cases but not additional increment. The letter is dated March 18, 2013.

11. When the advice of the Finance Department, Haryana came to the notice of the High Court by endorsement to the Registrar General steps were initiated to recover money from the petitioners towards excess payments of additional increments and a recovery order was passed on April 03, 2015 to petitioner No.1 and September 30, 2014 to petitioner No.2. It follows that the recovery order was issued in the year 2014 and 2015. Direction (iii) protects recovery when excess payments have been made for a period in excess of five years before the order of recovery is issued. This would take us back to 2009 and 2010 respectively. In 2009 and 2010 the petitioners were in service superannuating in 2012. A plain reading of the directions in Rafiq Masih at (iii) makes recovery impermissible of payments which were made from 2003 till 2012 without any action taken to recover the advance increment before retirement. Direction (iii) has not been considered by the Supreme Court in Jagdev Singh case and the

ruling cannot be treated as an authority on the point involving (iii) and, therefore, to my mind the general law against recovery of mistaken overpayments in Rafiq Masih will save the petitioners from recovery.

12. As far as the undertakings are concerned then it fall for consideration can those be used against employees falling in direction (ii) of Rafiq Masih as interpreted in Jagdev Singh where the issue involved was of an employee opting out of revised pay scale while furnishing undertakings. Undertakings given at the time of pay revision are different in character from grant of an additional increment because in revision of pay scales employees reap benefits differently and, therefore, are allowed by rules to exercise options depending on variable factors such as dates when increments fall due and things like that. The additional increment here was given as a one-time measure but with a recurring effect increasing pay but not the pay scale and that is why undertakings given at the time of revision of pay scales would be binding as a person should not be seen to shift his stand according to the vagaries of pay revision. If direction (iii) operates then by the very nature of things direction (i) would be accompanying right and when the two are read together recoveries are in my view impermissible in law.

13. The undertakings given by the petitioners at Annex R-3/2 and R-3/3 [with the written statement] in 2008 was even when the additional increments wrongly conferred were being paid since 2003 till retirement. What occasioned the demand of furnishing undertaking by the petitioners was the pay revision in the year 2008 in implementation of the Shetty Commission when a decision was taken to give benefits retrospectively from 2003 and not 2005. In any case, at the time undertakings were given, parties did not contemplate that they will ever be used against them since the petitioners were allowed to retire peacefully without initiating any action for recovery. Once they passed the age of superannuation then to disturb them may be a travesty of justice. However, since the grant of additional increments was indisputably wrongful with no clarity on the subject prior to retirement, the benefit inflating the pay wrongly will not percolate to increase service pension, allowances and retiral benefits which are open to alteration. This order only makes impermissible recovery from 2003 to 2012 in view of the law in direction (iii) in Rafiq Masih.

14. As a result of the above discussion and on the last contention raised by the petitioners, the petition is partially allowed. The recovery is set aside. The amounts of recovery be determined and refunded to the petitioners within four months from the date of receipt of certified copy of this order from court or from the petitioners, whichever is earlier. However, no interest will be payable thereon. The last pay and pension and allowances be accordingly re-fixed minus the additional increments on the dates of retirement, if not already done.