(2017) 01 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 16766 of 2012 (O&M)

Satpal APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2017) 2 SCT 40

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : Avinit Awasthi, AAG Punjab, for the Respondents; Madhav Pokhrel, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

Jaishree Thakur, J. (Oral) - Learned counsel files the fresh power of attorney on behalf of petitioner superseding the earlier counsel.

2. The instant writ petition has been filed for issuance of writ in the nature of mandamus seeking to restrain the respondents-Department from giving effect to the orders passed seeking to recover the amount of increments given to the petitioners.

3. In brief, the facts are that the petitioners were recruited as Masters/Mistresses in excess of posts advertised in the year 1992. The appointments of those teachers, who were recruited in excess of the posts advertised, were set aside, which included the appointment offered to the petitioners. By a policy decision of Government of Punjab, it was decided to continue their services on 89 days basis. The petitioners herein worked on 89 days basis from 1992 to 1996. An advertisement was issued inviting applications for the posts of Masters and Mistresses and pursuant to the said advertisement, the petitioners applied and got selected in the year 1996. The petitioners continued in service and were accorded promotions thereafter on the posts of Lecturers. An audit was

conducted and on the basis of said audit, the State of Punjab issued instructions and on the basis of these instructions the impugned notices were issued by the Head Masters/Principals that the amounts paid in excess to the petitioners on account of acquiring increments for the services rendered on 89 days basis should be recovered.

4. Mr. Madhav Pokhrel, Advocate, for the petitioners herein contends that the said recovery sought to be made, is wholly illegal and arbitrary, on account of the fact that they were selected on the posts of Masters/Mistresses, pursuant to the advertisement issued in the year 1992. They were called for interview and subsequently selected, however, on account of the fact that the State Government had appointed persons beyond the number of posts, their selection was set aside. After their selection was set aside, they were appointed on 89 days basis. Any increments that were given during that period, were not on account of any fraud or misrepresentation to get such monetary benefits, therefore, the recovery sought is unsustainable.

5. Per contra, Mr. Avinit Awasthi, AAG Punjab, appearing on behalf of respondents-State argues that the said recoveries are wholly justified because the petitioners herein were not entitled to any increments that were given to them, while they were working on 89 days basis from the year 1992 to 1996. In this regard, counsel places reliance upon judgment rendered in ''Chandi Prasad Uniyal & ors. v. State of Uttarakhand and ors.'', (2012) 8 SCC 417, to contend that in case payments have wrongly been made by the department, the same can be recovered.

6. I have heard learned counsel for the parties and with their assistance gone through the pleadings of the case.

7. Admittedly, the petitioners were working on 89 days basis from the year 1992 to 1996. This was on account of the fact that the State Government pursuant to an advertisement issued in the year 1992 had appointed Masters/Mistresses in excess to the number of posts advertised and the selection of the petitioners was set aside by the High Court in proceedings that came to be challenged. The increments that were awarded to the petitioners, were on account of the work that was done by them.

8. The question that arises for consideration in the instant case is whether any recoveries can be made of the monetary benefits given to the petitioners, which was in excess of their entitlement. The same situation arose before the Hon''ble Supreme Court in case ''State of Punjab and others v. Rafiq Masih and others'', 2015 (4) SCC 334. The question before the Apex Court was whether recoveries could be effected from an employee on account of monetary benefit given, which they were not entitled to. The Apex Court while noticing several judgments came to conclude as under:-

"12. 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, summarize 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."

In the instant case, admittedly increments were given to the petitioners by the State Government for the year 1992-1996, however, the same were sought to be withdrawn in 2012 on account of the fact that the High Court in certain proceedings held that the teachers on 89 days basis were not to be given benefits of increments. The petitioners herein had made no misrepresentation nor had played any fraud upon department in getting the benefits of those increments. The benefits of the increments were given to the petitioners for the year 1992-96, which is now sought to be withdrawn on the basis of a letter issued on 05.10.2012.

9. No doubt, the judgment rendered in ''Chandi Prasad Uniyal & ors. v. State of Uttarakhand and ors.'' (supra) lays down that recoveries can be made, in case, payment has been made without any authority of law, otherwise, it would amount to unjust enrichment. It was further held that excess payment due to wrong-irregular pay fixation can always be recovered. But in a later judgment, the Apex Court while deciding ''State of Punjab and others v. Rafiq Masih and others'' (supra) laid down few situation where recovery by employer is impermissible in law. One of the situation being where recoveries have been sought from the employee, when the excess payment was made for a period in excess of five years before the date of recovery order is issued. In the instant case, the recovery order is issued on 05.10.2012 and seeks to recover the increments that had been given to the petitioners for the year 1992-96. Therefore, this court has no hesitation in holding that such recovery would not be permissible. It is also to be taken note that the benefits as given were not sought on account of any fraud or misrepresentation on the part of the petitioner and

increments were given according to the policy prevalent at that time.

10. In view of the above, the impugned orders passed by the respondents-State seeking recovery of the amount of increments from the petitioners are illegal and arbitrary, therefore, are not unsustainable. Accordingly, the respondents-State is directed that in case, any recovery is already made from the petitioners in pursuance to the impugned orders, the amount so recovered be refunded to the petitioners with interest @ 6% per annum from the date of recovery, within a period of six months from the date of receipt of certified copy of this order. In the case the needful is not done within a period of six months, then the respondents-State shall be liable to pay the amount so recovered with interest @ 9% per annum from the date of recovery.

The instant petition stands allowed accordingly.

