

(2024) 05 SHI CK 0061

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 6535 Of 2021

Sunil Dutt Sanadhya

APPELLANT

Vs

Himachal Pradesh Road Transport Corporation

RESPONDENT

Date of Decision : 09-05-2024

Acts Referred:

Citation : (2024) 05 SHI CK 0061

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Onkar Jairath, Mohamed Ahamed Safee,. Vikas Rajput

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has, inter alia, prayed for the following reliefs:-

"(i) That a writ in the nature of Certiorari or any other appropriate writ, order of direction may kindly be issued to the respondents quashing the impugned order dated 02.11.2020 (Annexure P-6) and subsequent recovery ordered to be affected on the basis of the order dated 02.11.2020 be also quashed and set aside.

(ii) That a writ in the nature of mandamus or any other appropriate writ, order of direction may kindly be issued to the respondents directing them to reimburse the recovery, if any, affected from the petitioner in pursuance to the notice dated 14.09.2020 (Annexure P-4) and order dated 02.11.2020 (Annexure P-6).

(iii) That the respondents may be directed to release all consequential benefits of arrears in favour of the petitioners alongwith interest @ 9% p.a."

2. Learned Counsel for the petitioner submits that he is restricting his claim to the quashing of recovery order dated 2. 11.2020. His statement is taken on record. As prayed for, liberty is granted to the petitioner that if so advised, he may file a fresh petition with regard to the other reliefs.

3. The petitioner is aggrieved by issuance of recovery order dated 02.11.2020, Annexure P-6. Learned Counsel for the petitioner submits that in view of the fact that this recovery order was issued within one year as from the date of superannuation of the petitioner, the same is not sustainable in the eyes of law in view of the law declared by the Hon'ble Supreme Court of India in State of Punjab and others Vs. Rafiq Masih (White Washer), (2015) 4 Supreme Court Cases 334.

Accordingly, he prays that on this outcome, petition deserves to be allowed and impugned order deserves to be quashed.

4. Learned Counsel for the respondent has supported the order on the ground that as the recovery was ordered on account of wrong fixation of the benefit of ACPs, which was granted to the petitioner with effect from the year 2011, therefore, as the recovery has been bonafidely ordered because the petitioner had received amount which he was not legally entitled to, therefore, the petition is without any merit.

5. I have heard learned Counsel for the parties and I have also carefully gone through the pleadings as well as the documents appended with the petition.

6. The petitioner stood superannuated from service on 31. 01.2021. Annexure P-6 is dated 02.11.2020. Hon'ble Supreme Court of India in State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 Supreme Court Cases 334, has been pleased to hold as under:-

" 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law.

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service)

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 other case, 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."

7. A perusal of the illustrations that stand carved out by the Hon'ble Supreme Court in the said para of this judgment demonstrates that one of the situations wherein recovery is impermissible is where the incumbent is to superannuate within one year as from the day when the recovery is ordered. Admittedly, in the present case Annexure P- 6 has been issued just a few months before the date of superannuation of the petitioner, i.e. within one year of his date of superannuation. Therefore, as the impugned order is hit by the law declared by the Hon'ble Supreme Court of India, order dated 02.11.2020, Annexure P-6 is quashed and set aside, with further direction that no recovery will be effected from the petitioner on the basis of the impugned order. In case any amount stands recovered on the basis of the impugned recovery notice, then the same be refunded. Pending miscellaneous application(s), if any also stand disposed of accordingly.