
(2019) 05 P&H CK 0167

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10014 Of 2011, 22613 Of 2015

Yudhvir Singh

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 15-05-2019

Acts Referred:

Citation : (2019) 05 P&H CK 0167

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Win Koul, Amar Vivek, Deepak Sharma

Final Decision : Allowed

Judgement

By this common order, two writ petitions, which involve the same question of law and similar facts, the details of which have been given in the heading, are being disposed of. For the sake of convenience, the facts are being extracted from CWP No.10014 of 2011.

In the present writ petition, the grievance of the petitioner is with regard to the re-fixation of his pay vide order dated 18.05.2007 (Annexure P-6) and the consequent recovery from 15.03.2002 onwards.

As per the facts as mentioned in the writ petition, petitioner joined the Department of Education as a Lecturer in Economics on 22.09.1982 on adhoc basis and his service could be terminated at any time. He continued working on temporary/adhoc basis till 16.04.1987, when his services were regularized w.e.f. 01.11.1986. Petitioner was granted the benefit of an additional increment on completion of 8 years service and while computing the service of 8 years, the adhoc period spent by the petitioner prior to regularization of his service w.e.f. 01.11.1986, was taken into account and he was granted the benefit.

The said benefit was given in pursuance to the instructions dated 20.08.1996 according to which the adhoc service was liable to be taken into account while

computing the period of 8/18 years of service for the grant of additional increment to Group C and D employees. On 15.03.2002, the instructions dated 20.08.1996 were reconsidered keeping in view the judicial pronouncements including the one by the full Bench of this Court in CWP No.15034 of 1993 titled as R.K. Singla Vs. State of Haryana and others, decided on 02.02.1996, wherein it was held that it is only the period of adhoc service which is countable towards the seniority, can be counted for the purpose of grant of additional increment after rendering 8/18 years of service and not every adhoc service rendered by an employee. After the said date, another instructions dated 23.04.2003 was issued by the Government of Haryana stating therein that the benefit which has been granted to the employees under the 1996 instructions needs to be withdrawn but no recovery is to be made with regard to the amount which has been paid upto the issuance of instructions dated 15.03.2002 (Annexure R-3) with the reply.

In pursuance to the instructions which have been issued by the Government of Haryana mentioned hereinbefore, the pay of the petitioner was refixed by the respondents by the impugned order dated 18.05.2007 and the benefit of additional increment after rendering 8 years of service was granted to the petitioner keeping in view the date of his regular appointment, which was 01.11.1986. This order is being challenged by the petitioner that the benefit once granted to the petitioner cannot be withdrawn.

Though the order dated 18.05.2017 is under challenge in the present writ petition but during the course of hearing, learned counsel for the petitioner restricts his claim in respect of the recovery which is being ordered from the petitioner in pursuance to the said order. Counsel for the petitioner has not pressed the re-fixation which has been done by the impugned order.

Upon notice of motion, the respondents have filed the reply. In the reply, it has been admitted by the respondents that vide instructions dated 07.08.1992, benefit of additional increment was granted to the Government employees who have completed 8/18 years of regular service. It has been further admitted that under the instructions dated 22.08.1996, while computing 8/18 years of service, the adhoc service rendered by an employee was to be taken into account and petitioner was also granted benefit under the said instructions. Later on, keeping in view the decision of the Hon'ble Supreme Court of India in Civil Appeal No.13423 of 1996, decided on 19.09.2000, fresh instructions were issued by the Government of Haryana on 15.03.2002 by which only the regular service could have been counted for the grant of benefit of additional increment after 8/18 years of service.

Learned counsel for the respondents argues that till the issuance of instructions dated 15.03.2002, no recovery is to be effected and as the petitioner was continuously getting the said benefit, which was no longer available to him after 15.03.2002, the recovery is only to be effected after 15.03.2002 till the impugned order of re-fixation was passed i.e. 18.05.2007.

The relevant paragraph of the reply is as under:-

" 2. That the petitioner was appointed on adhoc basis w.e.f. 22.09.1982 and his services were regularized w.e.f. 01.11.1986. Vide State Government letter No.1/138/92-IPR (FD) dated 07.08.1992. The benefit of additional increment was granted by the Government to an employee who have completed 8/18 years satisfactory regular service. As per that police of the State adhoc service was not countable for the purpose of calculation of 8/18 years regular service. Some employees filed various writ petitions in Hon'ble Punjab and Haryana High Court for counting adhoc service towards 8/18 years service for the grant of additional increment. In pursuance of various decisions of the Hon'ble High Court, the State Govt. allowed these benefits to an employee issued instructions vide letter dated 22.08.1996 to count the adhoc service for the purpose of grant of additional increment on completion of 8/18 years service. But simultaneously the State Government filed an appeal in Hon'ble Supreme Court of India against the impugned order of the Hon'ble High Court which was decided by the Hon'ble Supreme Court of India on 19.09.2000 in Civil Appeal No.13423 of 1996. In compliance of Hon'ble Supreme Court of India order dated 19.09.2000 necessary instructions were issued vide Government letter dated 15.03.2002 and dated 23.04.2002 to the effect that adhoc service is not to be counted for grant of additional increment on completion of 8/18 years service and no recovery be effected from employees prior to 15.03.2002. Consequently, the pay of the employees was refixed. True copy of instruction dated 20.08.1996, 15.03.2002 and 23.04.2003 are enclosed as Annexure R-1, R-2 and R-3 respectively.

3. That the Government instructions dated 15.03.2002 and 23.04.2002 were challenged by some of an employees through CWP No.15555 of 2003 and CWP No.15055 of 2003 in the Hon'ble Punjab and Haryana High Court. The Hon'ble Court while disposing of bunch of CWPs in CWP No.15055 of 2003 and after considering the various judgments of the Hon'ble Apex Court i.e.

(i) State of Haryana V/s Haryana Veterinary and AHTS Uppal

(ii) State of Punjab V/s Gurdeep Kumar Uppal

(iii) Bharat Singh and others V/s State of Haryana and others the Hon'ble High Court dismissed all these writ petitions vide order dated 27.04.2004.

4. That while disposing of CWP No.15055 of 2003- Badal Singh V/s State of Haryana, the Hon'ble Court has observed as under:-

"Accordingly, petitioner No.24- Smt. Santosh Sharma and all other petitioners similar situated were issued show cause notice regarding fixation of their pay. The show cause notice had quoted the aforementioned para from the letter dated March 15, 2002 (P-4) and has called upon to show cause why the re-fixation in the cases of petitioners be not ordered. The aforementioned petitioners duly filed the reply to the show cause notice.

As the decision has already been taken by the respondents, the petitioner had

approached this Court. It is appropriate to mention that clarifactory order dated April 23, 2002 was also issued by the respondents. The operative part of the order shows that no recovery of overpayment involved after the period upto March 14, 2002 was to be made. The pay of all such employees was to be re-fixed notionally from the date of grant of benefit upto March 14, 2002 and actually from March 15, 2002."

5. That the petitioner was issued necessary show cause notice by respondent No.3 vide letter dated 29.01.2007 as to whether his pay not be re-fixed in terms of Government letter dated 15.03.2002. The petitioner replied the said show cause notice and considering all contents of the matter necessary speaking order regarding re-fixation of pay was issued by respondent No.3 vide order dated 18.05.2007 (Annexure P-6). Hence pay of the petitioner has been re-fixed vide order dated 18.05.2007 (Annexure P-6) in view of Government instructions dated 15.03.2002 and 23.04.2002 after following proper procedure which is sustainable in the eyes of law."

I have heard learned counsel for the parties and have gone through the record with their able assistance.

As the counsel for the petitioners only restricts their claim for the recovery, the same is being decided by the present order.

It is an admitted position that the respondent-State of Haryana had issued instructions on 22.08.1996 by which while granting the benefit of additional increment, the period of adhoc service was to be counted and it cannot be disputed that keeping in view the said instructions, petitioners in these writ petitions became entitled for the benefit of additional increment after rendering 8 years of service by counting his adhoc service, which benefit was extended to the petitioner by the respondents.

After the instructions dated 15.03.2002, when the Government of Haryana decided that the benefit of adhoc service cannot be given while granting the benefit of additional increment after rendering 8/18 years of service, the respondents should have withdrawn the benefit there and then. It is the respondents, who continued to give the benefit of additional increment to the petitioner upto the date of impugned orders. Once it was the respondents, who failed to implement their order upon the petitioner till the date of passing impugned order of refixing the salary of the respective petitioners, they cannot be allowed to recover the benefit, which was extended to the petitioners by them only and that too under the instructions of 1996, which had made the petitioner eligible for the grant of said benefit at the given time.

In a recent judgment given by the Hon'ble Supreme Court of India, guidelines have been framed with regard to the recovery, which is to be done from the employees. In the judgment given by the Hon'ble Supreme Court of India in State of Punjab and others Vs. Rafiq Masih etc, 2015 (4) SCC 334, guidelines have been framed as to under what circumstances, recovery cannot be done

from the employees. The relevant paragraph of the said judgment is 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 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 employees, 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."

A bare perusal of the said judgment would show that employees, who have either retired or nearing their retirement, no recovery can be effected from them. Further, as per clause III of the relevant paragraph, no recovery can be ordered in respect of withdrawal of order which is more than 5 years old. In the present case, impugned order was passed on 18.05.2007 and the petitioner in CWP No.10014 of 2011 was nearing his retirement as petitioner retired on 30.06.2008 and further, the recovery was being done after withdrawing the benefit, which was extended to the petitioner in the year 1990 and the order of recovery was being passed in the year 2007 therefore, the case of the petitioner in respect of the recovery is covered by the above said judgment and the same cannot be effected from the petitioner.

In respect of CWP No.22613 of 2015, learned counsel for the respondents admits that in this case also, the re-fixation and the recovery are being ordered in pursuance to the instructions dated 15.03.2002 as in the case of the petitioner in CWP No.10014 of 2011. A bare perusal of the impugned order would show that order of re-fixation of his salary was passed in the year 2014 and that too on the basis of the instructions dated 15.03.2002 i.e. after a period of approximately 12 years and further recovery was effected from the retiral benefits, which is clear from the impugned order Annexures P-7 to P-9.

In view of the above, the writ petitions are allowed qua the recovery to be made

from the petitioner in pursuance to the impugned order dated 18.05.2007 (Annexure P-6) in CWP No.10014 of 2011 and in pursuance to the impugned orders Annexures P-7 to P-9 in CWP No.22613 of 2015 are set aside. The recovery, if any, made from the petitioners, is declared to be illegal and against the well settled principle of law. The respondents are directed that in case any recovery has been effected from the petitioners in pursuance to impugned orders already set aside, the same be refunded to the petitioner within two months from the receipt of copy of this order.

The writ petitions are allowed in above terms.