

Barjinder Singh Vs Himachal Road Transport Corporation And Others

Court: High Court Of Himachal Pradesh

Date of Decision: Sept. 25, 2020

Hon'ble Judges: Sandeep Sharma, J

Bench: Single Bench

Advocate: Rakesh Kumar Dogra, Raman Jamalta

Final Decision: Allowed

Judgement

Sandeep Sharma, J

1. Petitioner though was initially engaged a Conductor in the respondent Corporation in the year 1976 but was subsequently promoted as Inspector.

Consequent upon promotion of the petitioner from the post of Adda In-charge (carrying pay structure of Rs.5910-20200 with grade pay of Rs.2800/-)

to the post of Inspector (carrying pay structure of Rs.10300-34800+3200 Grade Pay), vide office order No. HO.9E-935/2009(O) dated 13.6.2011 with

effect from 28.9.2011, his pay was fixed in the pay structure of Rs.10300-34800+3200 grade pay. Petitioner stood superannuated on 28.2.2014. It

emerges from the record that pay of the petitioner was refixed on 3.11.2014. On retirement, petitioner's pension was fixed and PPO issued to

him. Pension of the petitioner was fixed at Rs.9815/- per month with effect from 1.3.2014. However, while refixing pay of the petitioner vide letter

dated 23.1.2015 (Annexure A-4), recovery of Rs.42,262/- was contemplated against the petitioner. Petitioner issued a legal notice to the respondent

Corporation on 22.3.2015 (Annexure A-5), which was duly replied by the respondent Corporation vide reply dated 26.3.2015 (Annexure A-6).

Petitioner is aggrieved by the action of the respondent Corporation in contemplating recovery of Rs.42,262/- from the petitioner, after a period of one

year of his superannuation.

2. Respondents, in their reply, have stated that since petitioner was wrongly granted grade pay of Rs.2800/- in place of Rs.2400/-, while he was on the

post of Adda In-charge, as such, it is well within its right to recover the amount paid in excess to the petitioner, on account of wrong grant of higher

grade pay of Rs.2800/, while refixing his pay with effect from 1.1.2006.

3. Having heard learned counsel for the parties and perused material available on record, this Court finds that the proposed recovery has been ordered

after one year of the retirement of the petitioner. Besides this, the amount sought to be recovered is a petty amount of Rs.42,262/-.

4. Hon'ble Apex Court in case titled State of Punjab vs. Rafiq Masih, (2015)14 Supreme Court Cases 334, has categorically held that recovery

from the retired employees or employees, who are due to retire is impermissible, especially when there was no misrepresentation, if any, on the part of

the person concerned at the time of claiming benefit in his/her favour. In the case at hand, petitioner stood retired from the post of Inspector, from the

respondent Corporation on 28.2.2014 and recovery proceedings were initiated in the year 2015, when almost a year had elapsed, as such, taking note

of Rafiq Masih(supra), this court finds the action of the respondent Corporation in recovering amount from the petitioner, who is admittedly a retiree,

to be in violation of the law laid down by Hon'ble Apex Court. Moreover, the period, for which allegedly wrong grade pay was drawn by the petitioner

is from 1.1.2006 to 2.11.2010, i.e. during the period he was posted as Adda In-charge, as such, the recovery proceedings initiated in the year 2015 are

highly belated.

5. Further, Hon'ble Apex Court in subsequent judgment dated 29.7.2016 passed in case titled High Court of Punjab and Haryana and another

versus Jagdev Singh, while clarifying the principle enunciated in Rafiq Masih (supra), has held that recovery from the retired employees or employees,

who are due to retire is impermissible cannot be made applicable to the situation where the officer to whom payment was made in the first instance

was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. In the aforesaid judgment

Hon'ble Apex Court has held that if the officer has furnished an undertaking while opting for the revised pay scale, he/she is bound by the

undertaking given by him/her. At this stage, it would be relevant to reproduce paras No. 9 to 11 of the aforesaid judgment, which read as under:-

“9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be

recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present

where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have

been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the

fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc¹. this Court held that while it is not possible to postulate all situations of

hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom

the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be

refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

6. Careful perusal of aforesaid judgment rendered by the Hon'ble Apex Court clearly suggests that principle laid down by the Hon'ble Apex

Court in Rafiq Masih's case supra that recovery from employee belonging to Class-III and Class-IV service (or Group C and Group D service)

would be impermissible in law, still holds good. In the subsequent judgment rendered by the Hon'ble Apex Court in High Court of Punjab and

Haryana v. Jagdev Singh's case (supra), it has only clarified that recovery from those retired employees or who are due to retire within one year,

of the order of recovery shall be permissible who had given undertaking at the time of taking benefit that any payment, if found in excess would be

liable to adjusted. In the present case, it is not in dispute that petitioner is a Class-III employee coupled with the fact that the petitioner is a retired

employee and at no point of time he had given any undertaking making him liable for recovery. Though the respondents have stated in their reply that

the petitioner had given such undertaking but same has not been placed on record, as such, this Court has no reason to believe the stand taken by the

respondent. Otherwise also, petitioner, who is a Class-III employee and a retired employee, cannot be compelled to refund the amount which has been

paid by the respondent Corporation of its own, without any misrepresentation on the part of the petitioner.

7. Consequently, in view of the detailed discussion made herein above as well as law relied upon, present petition is allowed and Annexure A-4 is

quashed and set-aside to the extent recovery of Rs.42,262/- has been shown due from the petitioner. Accordingly, present petition is disposed of so

also pending application(s), if any.