(2010) 08 P&H CK 0433

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Veena Sethi		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: Aug. 23, 2010

Acts Referred:
Constitution of India, 1950 â€" Article 226, 227

Citation: (2010) 08 P&H CK 0433

Hon'ble Judges: Ajai Lamba, J

Bench: Single Bench

Judgement

Ajai Lamba, J.
This civil writ petition has been filed under Article 226/227 of the Constitution of India, praying for issuance of a writ in the

nature of certiorari, quashing Order dated 25.9.2009 (Annexure P-1) to the extent it directs recovery from the petitioner on withdrawal of benefit

of proficiency step up and refixation of pay.

2. Learned Counsel contends that refixation of pay is accepted by the petitioner, however, in view of the fact that petitioner has not played any

fraud in initial fixation of pay and has not misrepresented facts, recovery cannot be effected.

3. Learned Counsel contends that the issue has been dealt by Full Bench of this Court in Budh Ram and Ors. v. State of Haryana and Ors. (Civil

Writ Petition No. 2799 of 2008, decided on 22.5.2009) reported as 2009 (3) PLR 511.

4. Learned Counsel for the petitioner further states that the petitioner would be satisfied if the petition is disposed of in terms of decision of this

Court rendered in CWP 697 of 2010 (Kaur Chand v. State of Punjab and Ors.), decided on 2.3.2010.

5. Notice of motion.

6. On the asking of the Court, Ms. Charu Tulu, Senior Deputy Advocate General, Punjab, accepts notice on behalf of the respondents. Requisite

number of copies of the petition have been handed over to Learned Counsel for the respondents.

7. Learned Counsel for the parties pray that the matter be disposed of at this stage itself, in view of peculiar facts and circumstances of the case.

8. Learned Counsel for the petitioner has argued that the petitioner did not play any fraud and did not misrepresent any fact so as to take undue

advantage/monetary benefits from the respondents. In such circumstances, the case is squarely covered by the judgment rendered in Budh Ram''s

case (supra) and, therefore, the matter be decided accordingly.

9. Learned Counsel for the respondent-State contends that the respondents have not been able to verify whether the petitioner has played fraud or

not and, therefore, the facts need to be verified. Learned Counsel for the respondent-State, however, states that the matter be disposed of in terms

of judgment rendered in Kaur Chand''s case (supra).

10. I have considered the issue.

11. The following needs to be extracted from Budh Ram''s case (supra), for consideration of the issue raised in this petition:

It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even

when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to

recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee

is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting

on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had

known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct

interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a

manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess

amount simply because on a true and correct interpretation of the rules, such a benefit was not due. It does not require much imagination to say

that additional monetary benefits going to an employee may not always result in accumulation of his resources and savings. Such a benefit may

often be utilized on smaller luxuries of life which the employee and his family may not have been able to afford had the benefit not been extended to

him. The employees can well argue that if it was known to them that the additional benefit is only temporary and would be recovered back from

them, they would not have committed themselves to any additional expenditure in their daily affairs and would have cut their coat according to their

cloth. We have, therefore, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous

interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor

have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the

future, but the amount already paid to the employees cannot be recovered from them.

12. Relying on Budh Ram''s case (supra), this Court in Kaur Chand''s case (supra), has held in the following terms:

(6). Following the dictum in Budh Ram''s case (supra), the writ petition is allowed in part; the action of the respondents in ordering recovery of the

excess payments received by the petitioner as a result of Stepping-up of his pay or grant of ACP is hereby quashed. However, the impugned

order(s) to the extent of re-fixation of his pay and consequential re-determination of the retiral benefits are upheld. The recovery, if any, already

made from the petitioner shall be refunded to him within a period of four months from the date of receipt of certified copy of this order.

(7). Since the respondents have not filed any counter-reply/affidavit, it shall be open to them to verify the records and if it is found that the

petitioner had actually misrepresented the facts and/order played fraud etc. to gain the monetary benefits, to seek review of this order within a

period of six months from the date of receipt of a certified copy of this order.

13. In view of the common prayer of Learned Counsel for the parties, the petition is allowed in limited terms, in terms of the judgment dated

2.3.2010 rendered in CWP 697 of 2010 (Kaur Chand v. State of Punjab and Ors.), portion whereof has been extracted above.