(2010) 10 P&H CK 0305

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 18241 of 2010

Vijay Kumari		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: Oct. 7, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Ajai Lamba, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ajai Lamba, J.

This 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 the action of the Respondents to the extent it directs recovery from the Petitioner on account of withdrawal of benefit of additional increment(s) granted under Assured Career Progression Scheme.

2. Learned Counsel for the Petitioner contends that refixation of pay is accepted by the Petitioner. The Petitioner did not play any fraud or misrepresent facts to get monetary benefits. In such circumstances, the Respondents cannot effect recovery in view of law laid down 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.

3. 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.

4. Notice of motion.

5. On the asking of the Court, Mr. B.S. Chahal, 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.

6. 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.

7. Learned Counsel for the Respondent-State contends that the Respondents have not been able to verify whether the Petitioner has played fraud or not. In regard to recovery, learned Counsel for the Respondents has not been able to cite any judgment contrary to the judgments cited by learned Counsel for the Petitioner. Learned Counsel for the Respondents, however, states that pay of the Petitioner had been wrongly fixed and therefore, the Respondents have a right to recover the additional benefits released to the Petitioner.

8. I have considered the issue.

9. 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.

10. 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.

11. In view of the fact that the issue raised in this petition is squarely covered by judgment rendered in Kaur Chand''s case (supra), this petition is allowed in the same 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.