



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-9607-2000 (O&M)

Date of decision: 05.03.2025

Gurdas Ram and others

...Petitioners

VERSUS

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Harkirat Singh, Advocate for
Mr. Vikram Singh, Advocate for the petitioner(s).

Mr. Balwinder Singh, AAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 29.07.1999 whereby pay-scale of the petitioners has been reduced from Rs.810-1440/- to Rs. 770-1350/-.

Learned counsel appearing on behalf of the petitioners contends that the petitioners were working as 'Beldars' since 1980 at Ranjit Sagar Dam, Shahpurkandi, the then Tehsil Pathankot, District Gurdaspur. The petitioners were paid the pay-scale, as applicable to the Beldars. He submits that due to certain anomalies in the pay-scales, the 3rd Pay Commission recommended rationalization of the posts and fresh pay-scales were recommended. Vide communication No.14222-24/6RSDA/96 dated 14.05.1996 (Annexure P-2) the pay-scales of Rs.810-1440/- was given to the petitioners by the Chief Engineer/RSDC, Irrigation Works, Punjab. The



operative part thereof reads thus:-

“xxxxx

Subject: Implementation of Chapter-26-Skilled & Semi skilled.

The Beldars who are working in the Shops/field of R.S.D. Project drawing pay in the scale of Rs. 750-1350/- with initial start of Rs. 770/- having knowledge of trade concerned and are helping the technicians particularly in Shops and also in the field shall be promoted as Helper in the pay scale of Rs. 810-1440/- on the basis of performance for a minimum period of two years in a particular technical activity on recommendation's from the Xen/Field and approved by the concerned Superintending Engineers.

The workmen skilled/semi skilled working in the trade concerned, drawing pay in the scale of Rs. 930-1800 with initial start of Rs. 1000/- and who have been designated as Jr. Technicians by the Xen/Field with 5 years or more experience including that in Semi-Govt./Govt. as on 1.1.1986 or from the date of completion of 5 years service on RSD-Project shall also be placed in the scale of Rs. 1200-2100 as Technicians Grade-III at par with I.T.I. qualified trade workmen in their respective trades.

This has the concurrence of F& CAO/RSD Project conveyed vide his U.O. No. 248, dated 9.5.96.

xxxxx”



He submits that consequent upon the aforesaid communication, the pay-scale of the petitioners was recommended by the Executive Engineer and the same was duly approved by the Superintendent Engineer and accordingly, the petitioners were placed in the pay-scale of Rs.810-1440/- vide letter No.9224-28/13EG dated 24.09.1996 and the same was released to them. Necessary entries were carried out in the service book and arrears w.e.f. 01.01.1986 to 30.01.1997 were also paid. However, instead of use of the expression "Promoted", the expression "re-designate" was used in the order. Appropriate instructions were thereafter issued vide letter dated 13.03.1997 directing that the 'Beldars' have been promoted in the pay-scale of Rs.810-1440/- instead of just placing them in the said pay-scale and the instructions were made effective from 01.01.1996 to 13.03.1996. However, vide letter dated 18.03.1997, the respondents withdrew the above instructions issued vide their letter dated 13.03.1997 and further instructed that the implementation of Chapter 26 of the 3rd Pay Commission as granted to the petitioners would not be effective from 01.01.1986 up to the date of regularization i.e. 13.03.1996 as specified in the letter dated 13.03.1997 but will be reckoned from the date of issuing of instructions i.e. 14.05.1996 (Annexure P-2) and subject to the availability of the posts as per the seniority. Hence, in essence the stand of the respondents was that Chapter 26 of the 3rd Pay Commission would only apply to the petitioners after regularization and would not apply to the work charged period of service and therefore, the petitioners were not entitled to arrears from 01.01.1986 since their services were regularized w.e.f. 13.03.1996. The letter issued by



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the Chief Engineer/RSDC dated 24.09.1996 releasing the pay-scale of Rs.810-1440/- was accordingly withdrawn by the respondents vide office order dated 18.08.1997.

The above instructions dated 18.08.1997 were under challenge in C.S. No. 212 of 1998 before the Civil Court at Pathankot for declaration and permanent injunction vide judgment and decree dated 15.05.1999, the Civil Suit was allowed and the order withdrawing the pay-scale of Rs.810-1440/- and demoting petitioners to the post of 'Beldar' was held to be illegal for having been issued without granting any opportunity of hearing.

In compliance to the above judgment and decree, the petitioners were re-instated in the pay-scale of Rs.810-1440/- on 07.06.1999 and a show cause notice dated 09.06.1999 was served upon the petitioners as to why their re-designation to the post of Helper be not withdrawn. The relevant extract of the show cause notice reads thus:-

“xxxxxx

Subject: Withdrawal of the pay of Rs. 810-1440 which was given wrongly/inadvertently.

Chapter 26 of the 3rd Punjab Pay Commission Report referred in Chief Engineer/RSDC letter No. 14222-24/6RSDA/96 dated 14.05.1996 is applicable to the work-charged employees only. Your services have since been regularised by the Punjab Government w.e.f. 13.03.1996 and you are working in regular capacity under the rules contained in Punjab Civil Service Rules.

Since Chapter-26 was not applicable to you, you are



not entitled to the benefit of re-designation as helper in the pay scale of Rs. 810-1440 under chapter-26. The orders issued vide this office No. 9224-28/138G dated 24.09.1996 were issued by mistake i.e. inadvertently, which needs correction and reversion to your original pay scale of Rs. 770-1350 as beldar as well as the recovery of arrear/excess payment made to you on this account.

Through this notice, you are called upon to submit your objection, if any, as to why the pay scale of Rs. 810-1440 and re-designation as helper granted to you vide this office No. 9224-28/13 EG dated 24.9.1996 should not be withdrawn and why should you not be placed in the original pay scales of Rs. 770-1350, actually applicable to you and why the arrear/excess payment paid to you on this account should not be recovered from you. Your reply must reach this office within 15 days from the issue of this letter.

You are also advised to see the undersigned personally on 25.6.1999 for personal hearing in my office between 3.00 PM to 4.00PM so as to proceed further.

xxxxx”

The petitioners submitted their reply to the said show cause notice stating therein that once the pay-scale has already been released to them, the same cannot be withdrawn. He further submits that notwithstanding, the specific plea raised by the petitioners, the respondents



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passed the order dated 29.07.1999 whereby they directed the re-fixation of pay of the petitioners in the pay-scale Rs.770-1350/- instead of Rs.810-1440/-. The operative part of the order reads thus:-

“xxxx.

The reply submitted by you with reference to this office Letter No. 2862-85/13-EG dated 9.6.99 received in this office on 30.6.99 has been considered sympathetically and found unacceptable on account of the following reasons.

As per Chief Engineer/RSDC, Shahpurkandi letter No. 14222-24/6RSDA dated 14.5.96, the scale of Rs. 810-1440 is applicable only to such Beldars who have the knowledge of trade concerned and are helping the technicians. However, the promotion from the rank of Beldar to the higher scale could not be made after 13.3.96 (date of regularisation of service) by adopting the pick & choose policy. The promotions are always made on seniority-cum-merit basis and subject to the availability of posts available in the Schedule of New Expenditure.

The cadre controlling authority of the regular workmen lies with the Chief Engineer/Canals Punjab, Chandigarh and the RSD Authorities are not competent to order promotion of the regular workmen after 13.3.96.

The letter dated 14.5.96 issued by the Chief Engineer/RSDC as referred in the first para was implemented



in your case inadvertently because you are governed under the Pb. CSR after regularisation of services w.e.f. 13.3.96. After regularisation, the joint seniority of all the workmen in the concerned trade have to be maintained at State Level.

Since Chapter-26 was not applicable to you. The pay scale of Rs. 810-1440 was granted to you due to inadvertent mistake and needs immediate rectification and re-fixation of your pay in the scale of Rs. 770-1350.

In light of the above, the notice served upon you vide this office letter No. 2862-85/13-EG dated 9.6.99 to withdraw the pay scale of Rs. 810-1440 and place you in your original scale of Rs. 770-1350, actually applicable to you, is legal and absolutely justified and is without any prejudice.

Keeping in view the above position the orders issued by this office letter No. 9224-28/13-EG dated 24.9.96 are hereby withdrawn. It is also ordered that the arrear (if any) paid to you in excess of admissibility shall also be recovered from your pay.”

Hence, the present petition was filed.

Learned counsel appearing on behalf of the petitioners has further vehemently argued that the benefits already having been given to the petitioners without any fault of theirs, could not have been withdrawn by the respondents since there was no concealment of any fact on their part and no



foul play is attributed to them. The mistake, if any, was unilateral and on the part of the respondents themselves.

Learned State counsel on the other hand has raised the following issues, while countering the arguments of the counsel for the petitioners:

- (i) That the State has all the powers to rectify a mistake. The State Government noticed an anomaly in advancing the benefit to the petitioners under Chapter 26 of the 3rd Punjab Pay Commission Report that had been relied upon the by Chief Engineer/RSDC in the letter dated 14.05.1996. It was noticed that the said Chapter 26, even though relied by the Chief Engineer/RSDC, was not applicable to the petitioners who were then working as work-charged employees and had been regularized by the Punjab Government in March-1996. Hence, the petitioners were not entitled to the benefit of re-designation as Helper in the pay-scale of Rs.810-1440/-. It is within the power of the Government to rectify the mistake. He further contends that the argument of the petitioners that the benefit once given cannot be withdrawn has been misconstrued. The operative scope of the Civil Court judgment is only a declaration to the effect the benefits that have been disbursed in favour of the petitioners have been withdrawn without a hearing



and allowed the respondents to pass a fresh order. There is no declaration in favour of the petitioners holding them entitled to the benefits and it was a decision based on non-compliance of principles of natural justice. A fresh order has thereafter been passed as per law and after complying with legal principles.

- (ii) He further submits that even though the order dated 29.07.1999 reduced the pay-scale and sought recovery, however, no prayer has been made for seeking setting aside of the order of recovery and only a restoration of pay-scale is prayed for. The present case not being that of recovery of the excess amount already paid to the petitioners, hence, any correction of a mistake cannot be held to be beyond the jurisdiction power of the State Government.
- (iii) Further, the respondents have specifically stated out in the reply as also in the final decision that the Chief Engineer was not competent to grant the benefits to the work-charged employees, especially when the said Chapter was not applicable to them and the benefits would have been extended only from the date of regularization. No counter to the same has been filed by the petitioners, hence, the position stands acknowledged.



No other argument has been raised nor any judgment has been cited by the counsel for the parties.

I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition with their able assistance.

Undisputedly, the respondents had placed reliance on the interpretation and application of Chapter 26 of the 3rd Pay Commission report while granting the benefit of re-designation to the post of Helper and giving the pay-scale of Rs.810-1440/-. The specific stand of the respondents that the petitioners did not fall under the said Chapter has not been countered by the petitioners by referring to any instructions/orders or judgment(s). The specific stand and argument has thus remained un-rebutted, hence, the submission of the respondent cannot be dispelled.

Learned counsel for the petitioners is not in a position to refer to any judgment or law on the aspect that the fixation of a higher pay-scale already given cannot be withdrawn, when recovery of the benefits availed under such a decision is not being made. He is also not in a position to refer to any provision either in the Pay Commission's Report or a decision taken otherwise that the benefit of pay of Rs.810-1440/- was rightly granted to the petitioners at the very first instance.

In the absence of response to any of the questions above, it cannot be held that initial grant of pay-scale of Rs.810-1440/- was correct and based upon right interpretation and application of Chapter 26 of the 3rd Pay Commission Report. Once the petitioners have failed to show their



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entitlement to the aforesaid pay-scale, I am afraid that the contention of the petitioners that benefits of a higher pay-scale already granted cannot be withdrawn would be misconceived. It would be always within the competence of the State Government to rectify a mistake that has occurred either on account of mis-interpretation or on account of oversight or even otherwise, on the same being detected.

The same now leads to the second question as to whether the amount paid earlier can be recovered or not.

The contention of the respondent-State that no specific prayer has been made against order of recovery is misconceived. The petitioners have already challenged the order as a whole and if their prayer for restoration of the pay-scale of Rs.880-1440/- was to be accepted, there would have been no question of recovery. Thus, the prayer against recovery is inherent. Besides, the impugned order was stayed by the Division Bench vide order dated 27.07.2000 to the extent of recovery, hence, there was a specific prayer for seeking stay against recovery.

It is also not in dispute that the petitioners fall in Group-‘C’/Group-‘D’ employees and had not made any misrepresentation at the time of grant of the benefits. The mistake was unilateral and on the part of the respondents themselves. The judgment of the Hon’ble Supreme Court in the matter of **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported as **AIR 2015 Supreme Court 696** prohibits recovery of amounts disbursed in excess to the Group-‘C’/Group-‘D’ employees when such a disbursement is not a result of fraud/concealment by the employee.



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It has also come forth that almost all petitioners already stand retired.

The position in law thus prohibits the State Government from effecting recovery of the benefits disbursed pursuant to a decision taken by them when such a decision is not perpetuated by any fault or misrepresentation, hence, recovery cannot be effected by the respondents from the petitioners.

In view of the above, I find no error, illegality, impropriety or perversity in the order passed by the respondents reducing the pay-scale of the petitioners from Rs.810-1440/- to Rs.770-1350/- but the order is bad to the extent of directing recovery. The present writ petition is accordingly dismissed to the above extent.

All pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

05.03.2025*Mangal Singh*

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No