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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 18-08-2025

1. CWP-23693-2025(O&M)

INDIAN COUNCIL OF AGRICULTURAL RESEARCH AND
OTHERSPetitioner(s)

VERSUS

ISHWAR SINGH AND ANOTHERRespondent(s)

2. CWP-23695-2025(O&M)

INDIAN COUNCIL OF AGRICULTURAL RESEARCH AND
OTHERSPetitioner(s)

VERSUS

OM PARKASH ANOTHERRespondent(s)

And

3. CWP-23721-2025 (O&M)

INDIAN COUNCIL OF AGRICULTURAL RESEARCH AND
OTHERSPetitioner(s)

VERSUS

SURESH KUMAR ANOTHERRespondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Naveen Chopra, Advocate
for the petitioner in all the petitions.

HARSIMRAN SINGH SETHI, J. (Oral)

1. Present are the bunch of three writ petitions, the details of which are mentioned in the heading, involve common question of law in the context of common set of facts and thus they are being decided by a common order.

2. In the present bunch of petitions, the challenge is to the order 23.04.2024, (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh (hereinafter referred as “Tribunal”) by which, though the withdrawal of the benefit of promotion to Higher Grade T-3 has been held to be valid but, the payment made to the respondents while working on the said post in question, which was later on withdrawn, the same have been directed not to be recovered from the respondents.

3. Learned counsel for the petitioner argues that once, the benefit of promotion to a Higher Grade T-3 was not admissible to the respondents, the same is liable to be withdrawn along with recovery of the excess amount paid, which decision of the petitioner, has been set aside by the Tribunal vide impugned order, which is causing prejudice to the petitioner.

4. We have heard the learned counsel for the petitioner and have gone through the records of the present case with his able assistance.

5. It may be noticed that the promotions and the consequential benefits, which were ultimately withdrawn from the respondents was granted by the Officers of the petitioner only. Nothing has come on record that there was any fraud played upon by the respondents to claim the said benefit.

6. As per the settled principle of law settled by the Hon'ble Supreme Court of India in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195*, no recovery can be done of the excess amount paid from Class-III and Class-IV employee. Further, no recovery can be done in case, a benefit has been received by the employee for a period of 5 years continuously. The relevant paragraph of the said judgment is as under:-

“12. 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 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.”

7. It is a conceded position that the respondents were working of Class-III posts hence, claim of the respondents that no recovery can be made from them is covered in their favour and learned counsel for the petitioner has not been able to rebut the same.

8. Furthermore, the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022***, has held that where an employee is not at fault with regard to the extension of excess benefit that he/she has received and there has been no mis-representation and fraud on behalf of the employee concerned to get the emoluments beyond his/her entitlement, the recovery of the excess amount received by that employee cannot be done. The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment

received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

9. Learned counsel for the petitioner has not been able to rebut the settled principle of law mentioned above, which covers the case of respondent in their favour qua recovery of the excess amount paid.

10. At this stage, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.5899 of 2012 titled ***Chandi Prasad Uniyal and ors. Vs. State of Uttarakhand and ors.***, decided on 17.08.2012 to contend that recovery can be effected if any amount is received by an employee without authority of law.

11. It may be noticed that the said judgment has already been considered by the Hon'ble Supreme Court of India while deciding ***Rafiq Masih's case (supra)***.

12. Keeping in view the totality of the circumstances, the prayer of the petitioner that even the excess payment made to the respondents be allowed to be recovered, cannot be accepted.

13. Present bunch of petitions stand dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

18-08-2025
Sapna Goyal

(VIKAS SURI)
JUDGE

Note: Whether speaking: YES
Whether reportable: NO