



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No.368 of 2019

Decided on: 25th April, 2023

Jawahar Lal (deceased) through LRs ..Petitioner

Versus

State of H.P. & Ors. ...Respondents

Coram

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge

¹ *Whether approved for reporting? Yes*

For the petitioner: Mr. Abhishek Dulta, Advocate.

For the respondents: Mr. Y. P. S. Dhaulta & Mr. Navlesh Verma, Additional Advocates General and Ms. Seema Sharma, Mr. Sumit Sharma and Ms. Leena Guleria, Deputy Advocates General., for respondents No.1 and 2.

Mr. Tara Chand Chauhan, Advocate, for respondent No.3.

Jyotsna Rewal Dua, Judge

The petitioner has questioned the decision of the respondents dated 07.01.2010, whereby an amount of Rs.1,31,152/-, on account of alleged overpayment to him, was ordered to be recovered from him. In fact, payment of this amount, which was part of GPF, was withheld by the

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

respondents on the ground that the petitioner was not entitled for the same. The petitioner has prayed for following substantive reliefs in this petition: -

- “(i) That the impugned decision dated 7.1.2010 Annexure P/2 of the respondent No.3 effecting recovery of an amount of Rs.1,31,152/- on account of overpayment may be held illegal and arbitrary.*
- (ii) That the recovered amount of Rs.1,31,152/- may be ordered to be refunded to the petitioner alongwith interest w.e.f. September 2009 (i.e. date of retirement of the petitioner) alongwith interest @ 18% per annum till the actual realization of the amount.*
- (iii) That the respondent may also be directed to pay the interest @ 18% on the amount of Rs.66000/- contributed by the petitioner in his GPF account for the year 2009 till the actual realization of amount.”*

2. The petitioner joined the respondent-Education Department on 24.11.1969 as Junior Basic Trained Teacher (JBT). He was promoted to the post of Head Teacher on 01.10.2001. The petitioner was further promoted as Central Head Teacher on 30.12.2004 and he retired as such on 30.09.2009.

According to the petitioner, an amount of Rs.6,71,835/- was due to be paid to him as GPF on the date of retirement on 30.09.2009. However, the respondents made the payment of GPF amounting to Rs.5,40,682/- in the

month of January 2010. An amount of Rs. 1,31,152/- was illegally deducted from the due and admissible GPF payable to the petitioner.

Further contention has also been raised for the petitioner that the respondents have not paid the interest on the delayed payment of GPF amount.

3. The respondent-Department (respondents No.1 and 2) has taken a stand that an amount of Rs.1,31,152/- was withheld from the payable GPF amount of the petitioner on account of an objection raised by respondent No.3 (office of Accountant General).

Respondent No.3 in its reply has clarified that GPF final payment case of the petitioner was received in its office on 09.11.2009. The case was rechecked and fresh calculations were made. While rechecking the case, it was noticed that in the year 1984-85, an amount of Rs.9,000/- and in the year 1989-90, an amount of Rs.4942/- had been erroneously shown in excess in the GPF account of the petitioner. After noticing the error in petitioner's GPF account, the same was rectified. Rs.13942/- (Rs.9000 + 4942) in all were wrongly credited in petitioner's GPF

account. This amount alongwith applicable interest was worked out as Rs.1,31,152/- as on 30.09.2009. Hence, this amount was deducted from the admissible GPF payment towards the petitioner.

4. The stand taken by the respondents is in teeth of well settled legal position, which has been summarized by the Division Bench of this Court in a decision dated 24.03.2022, delivered in **CWPOA No.3145 of 2012 (S. S. Chaudhary Vs. State of H.P. and others and connected matters)**. Relevant paragraph of the judgment reads as under:-

“35. In view of the aforesaid discussion, as held by Hon'ble Supreme Court in Rafiq Masih's case (supra), it is not possible to postulate all situations of hardship, where payments have mistakenly been made by the employer, yet in the following situations, 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.

- (vi) Recovery on the basis of undertaking from the employees essentially has to be confined to Class-I/Group-A and Class-II/Group-B, but even then, the Court may be required to see whether the recovery would be iniquitous, harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*
- (vii) Recovery from the employees belonging to Class-III and Class-IV even on the basis of undertaking is impermissible.*
- (viii) The aforesaid categories of cases are by way of illustration and it may not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formula and to give any exhaustive list of myriad kinds of cases. Therefore, each of such cases would be required to be decided on its own merit."*

In the instant case, the petitioner had retired from Class-III post. The case of the petitioner would be covered by situations (i) and (ii) of the above judgment. It is not the case of the respondents that the petitioner had misrepresented any facts to them. The GPF amount was being deducted by the respondents. The accounts thereof were being maintained by the respondents. In case, some error crept in maintaining the GPF amount of the petitioner during the years 1984-85 and 1989-90, the fault, if any, lay squarely on the respondents. It was for the respondents to have rectified the error at the appropriate time. The respondents sought to correct their mistake during January 2010. The exercise

was undertaken after about 25 years from the date of alleged mistake and four months after petitioner's retirement. Apart from deducting the principal amount of Rs.13942/-, alleged to have been wrongly credited in petitioner's GPF account in the years 1984-85 and 1989-90 the respondents also added interest thereupon and arrived at the figure of Rs. 1,31,152/-, which they have deducted from the due and admissible GPF amount payable towards the petitioner. Such a recourse in the given facts was impermissible in law. The prayer of the petitioner for refund of an amount of Rs.1,31,152/- alongwith interest after quashing the impugned decision dated 07.01.2010 (ordering effecting recovery of this amount) is justified.

5. Learned counsel for respondent No.3 on the basis of instructions, has submitted that due and admissible interest on the delayed payment of the GPF amount has already been paid to the petitioner under the applicable rules. This instruction was imparted in respect to prayer No.3 of the petition. There was no counter to this submission on behalf of the petitioner.

6. In view of above, the present writ petition is

partly allowed. the respondents are directed to refund and release the withheld GPF amount of the petitioner in the sum of Rs.1,31,152/- alongwith interest @5% per annum from the due date till its payment. The respondents are directed to carry out this entire exercise within a period of six weeks from today.

The present writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

Jyotsna Rewal Dua
Judge

April 25, 2023

R.Atal