

Punjab-Haryana High Court

Ajmer Singh Kooner & Ors vs The State Of Punjab & Anr on 2 September, 2009

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

Civil Writ Petition No. 12041 of 2009

DATE OF DECISION : SEPTEMBER 2, 2009

AJMER SINGH KOONER & ORS.

..... PETITIONER(S)

VERSUS

THE STATE OF PUNJAB & ANR.

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE AJAI LAMBA

PRESENT: Mr. RK Arora, Advocate, for the petitioner(s).
Ms. Charu Tuli, Senior DAG, Punjab.

AJAI LAMBA, J. (Oral)

This order shall dispose of two petitions viz. CWP 12041 of 2009 (Ajmer Singh Kooner and others v. The State of Punjab and another) and CWP 12179 of 2009 (Lakhwinder Singh and others v. The State of Punjab and another), as common questions of law and fact are involved. The prayer, in both these petitions, has been made against the same department i.e. Department of Agriculture, Punjab.

For reference to facts, record of CWP 12041 of 2009 (Ajmer Singh Kooner and others v. The State of Punjab and another) is being taken up.

This petition under Articles 226/227 of the Constitution of India has been filed praying for issuance of a writ in the nature of certiorari quashing order dated 1.4.2008 (Annexure P-7), whereunder the claim of the petitioners for withdrawing the recovery of excess payment on account of wrong fixation of pay and refund of the recovered amount has been declined. Vide the impugned order

(Annexure P-7), the decision on the legal notice of the petitioners has been taken, as a consequence of directions issued by this Court, while dealing with earlier petition of the petitioners; namely, CWP 4382 of 2008 (Ajmer Singh Kooner and others v. The State of Punjab and another) decided on 18.1.2008. On consideration of the grounds taken in the legal notice, the respondent- Department has taken a decision that the pay of the petitioners was liable to be refixed with effect from 1.1.1996 under the Punjab Civil Services (Revised Pay) Rules, 1998, and excess payment of salary is required to be recovered.

Learned counsel for the petitioners states that the petitioners confine the claim only in challenge to recovery.

In regard to recovery, learned counsel for the petitioners contends that the petitioners did not play any fraud and did not misrepresent the facts. In these regards, learned counsel for the petitioners relies on Full Bench judgment of this Court rendered in CWP 2799 of 2008 (Budh Ram and others v. State of Haryana and others) decided on 22.5.2009.

Learned counsel for the respondent-State has not been able to distinguish the judgment in Budh Ram's case (supra).

Learned counsel for the respondent-State has further not been able to draw the attention of the Court towards any material or evidence to indicate that the petitioners had played any fraud or had misrepresented the facts, on account of which the pay was erroneously fixed.

In Budh Ram's case (supra), the following second question was framed, for consideration:-

"ii) Cases in which the benefits sought to be recovered were granted on the basis of a bonafide mistake committed by the authority granting the same while applying or interpreting a provision contained in the service rule, regulation or any other memo or circular authorizing such grant regardless whether or not grant of benefits involved the performance of higher or more onerous duties by the employee concerned;"

The question has been answered in the following terms:-

"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."

Considering the facts and circumstances of the case and particularly the fact that the petitioners had not played any fraud and had not misrepresented the facts in getting the pay erroneously fixed, this petition is allowed to the limited extent that the respondents would have no right to effect recovery from the petitioners of the amount already released in favour of the petitioners. Consequently, it is further held that any amount recovered in the interregnum period shall be refunded to the petitioners within 4 months of receipt of certified copy of this order.

September 2, 2009
Kang

(AJAI LAMBA)
JUDGE

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?