IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11053-2024
Reserved on: 20.03.2026
Pronounced on: 27.03.2026
Uploaded on: 27.03.2026

SUBHASH CHAND **-PETITIONER**

V/S

STATE OF HARYANA AND ANOTHER **-RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Japsehaj Singh, Advocate, with
Ms. Digantika Rao, Advocate
for the petitioner.

Mr. Bhupender Singh, Addl. A.G., Haryana.

Mr. Ranjit Singh Kalra, Advocate
for the respondent No.2.

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KULDEEP TIWARI, J.

1. Through the instant writ petition, the petitioner calls into question the validity of the order dated 08.01.2024 passed by the respondent No.2- District and Sessions Judge, Kaithal, whereby although the petitioner has been granted 3rd ACP w.e.f. 01.02.2023 on the post of Daftri, his pay has been directed to be re-fixed in accordance with the opinion rendered by the concerned Accounts Officers, and recovery proceedings, if any, have also been directed to be initiated separately as per the rules.

2. Shorn of unnecessary details, the facts germane to the disposal of the instant writ petition are that the petitioner joined the office

of the District and Sessions Judge, Bhiwani, as Daftri on 25.01.1999 and was subsequently promoted as Clerk on 22.05.2010. He was granted the benefit of 1st and 2nd ACP on 01.02.2009 and 01.02.2015, respectively. He was also granted the benefit of an additional increment on 29.07.2019, i.e., subsequent to his promotion as Clerk. Thereafter, consequent upon the completion of his 24 years of service on 24.01.2023, he made a request for granting him the benefit of 3rd ACP in accordance with the applicable rules. Accordingly, an opinion was sought from the Section Officer of the Sessions Division concerned, who, vide opinion dated 26.09.2023, opined that the additional increment granted to the petitioner on his promotion was not admissible, as he was posted as Daftri at the time of implementation of the Shetty Commission's report. It was also opined that the pay of the petitioner fixed at the time of grant of the 2nd ACP also needs to be reviewed/refixed, and that his case for grant of 3rd ACP w.e.f. 01.02.2023 on the post of Daftri, under Rule 7(3) read with Rule 13 of the Haryana Civil Services (Assured Career Progression) Rules, 2016, may be considered subject to fulfillment of the conditions required for grant of ACP. Based on this opinion, a second opinion was also sought from the Chief Accounts Officer-cum-Nodal Officer concerned, who, vide letter dated 06.11.2023, forwarded the hereinafter extracted opinion of their Senior Accounts Officer:-

> *"Keeping in view the facts as narrated in the note it is submitted as under:-*
>
> *1. Pay fixed at the time of granting 2nd ACP on 1.2.2015 as daftri is not in order and needs to be re fixed.*

2. He is not entitled to get one additional increment granted on 22.5.10 as clerk on the implementation of Shetty Commission.

3. He is entitled to get 3rd ACP w.e.f. 1.2.2023 as daftri under rule 7(3) r/w rule 13 of Haryana Civil Services (ACP) Rules, 2016, as per provisions contained in ACP rules."

3. The above opinions constituted the bedrock for the impugned order dated 08.01.2024, which has caused prejudice to the petitioner and has impelled him to assail the same before this Court.

4. Learned counsel for the petitioner submits that the "additional increment" granted to the petitioner was granted specifically in accordance with the rules and it was not at all an "advance increment", as is evident from the opinions (supra) furnished by the Section Officer and the Accounts Officer concerned. He also places reliance upon the order dated 25.01.2018 passed in CWP-14750-2015 (Om Parkash and others vs. State of Haryana and others), to submit that a Coordinate Bench of this Court has already clarified that any increment paid with reference to the Haryana Civil Services (Pay) Rules, 2016, is distinct from the implementation of the Shetty Commission's report in respect of increment and does not amount to an advance increment.

5. Learned counsel for the petitioner, although endeavouring to justify the petitioner's entitlement to the 2nd ACP, fairly concedes, in view of the rule position, that the said benefit was erroneously granted. However, it is submitted that there was neither any misrepresentation, fraud, deception, nor concealment of material facts on the part of the petitioner. It is further submitted that the petitioner had no role whatsoever in the fixation or calculation of his pay. Consequently,

recovery of excess amount, if any paid, is impermissible in law, particularly when tested on the anvil of equity.

6. *Per contra*, learned counsel appearing for the respondent No.2 submits that the petitioner was wrongly granted the benefit of 2nd ACP by taking into account the presumptive pay of the post of Clerk instead of that of Daftri. It is contended that the petitioner's pay ought to have been fixed by granting increments on the pay he was drawing as Daftri, i.e., with a grade pay of ₹ 1800/-.

7. It is further submitted that the petitioner was granted the benefit of 2nd ACP w.e.f. 01.02.2015 on the post of Daftri, i.e. his feeder post, as per the rules in vogue. Consequently, his pay was required to be fixed as if he had not been promoted. However, his pay was erroneously fixed by taking into consideration the grade pay of ₹1900/- (applicable to the post of Clerk) instead of ₹1800/-, which is contrary to the rules.

8. Learned counsel for the respondent No.2 further submits that the petitioner was working as Daftri in the Sessions Division concerned as on 01.04.2003 and was promoted to the post of Clerk only on 22.05.2010 in the pay scale of ₹5200-20200 with grade pay of ₹1900/-, being an undergraduate. Therefore, since the petitioner was not holding the post of Clerk on 01.04.2003, he was not entitled to the benefit of one additional increment recommended under the Shetty Commission's report w.e.f. 01.04.2003, in view of the clarification issued by the Finance Department, Government of Haryana, vide letter dated 22/24.04.2014.

9. This Court has heard the rival submissions advanced by

learned counsel for the parties and has also made a studied survey of the record. In the considered opinion of this Court, the following issues emerge for determination in the instant writ petition:-

> ***(i) Whether there occurred any anomaly while granting 2nd ACP to the petitioner ?***
>
> ***(ii) Whether the additional increment granted to the petitioner was not admissible to him ?***
>
> ***(iii) If the answers to issues Nos. (i) and (ii) are in the affirmative, whether recovery proceedings can be initiated against the petitioner ?***

10. To pen down an answer to issue No. (i), a survey of the relevant rule position governing the entitlement of an official to ACP scales is imperative. Rule 13 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 is extracted hereunder:-

> *"**13. Special entitlement for ACP scales:—** Where the functional pay structure of the promotional post in the hierarchy is inferior to the ACP pay structure entitlement of the Government servant, had he not been promoted, as per his eligibility and entitlement on completion of prescribed length of service for the 1st, 2nd or 3rd ACP pay structure entitlement, as the case may be, the Government servant shall be entitled to be placed in the 1st or 2nd or 3rd ACP pay structure as the case may be after completing the prescribed period of service for being placed in the 1st or 2nd or 3rd ACP pay structure:*
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> *Providing that such functional promotion to a post with such inferior pay structure shall not be counted as a financial upgradation for the purposes of these rules."*

11. What surges forth from a perusal of Rule 13 is that ACP is required to be fixed by having regard to the feeder post and not the promotional post. In the instant case, the petitioner was initially appointed

as Daftri on 25.01.1999 and was promoted as Clerk on 22.05.2010. Consequently, his presumptive pay was required to be fixed by granting him increments on the grade pay which he was already drawing as Daftri, i.e., grade pay of ₹1800/-, whereas he was granted increments on the grade pay of ₹1900/- by having regard to his pay scale as Clerk, which post he acquired only by way of promotion in the year 2010. Therefore, the anomaly that occurred while granting 2nd ACP to the petitioner has rightly been rectified vide the impugned order. Accordingly, **issue No. (i) is answered in the affirmative**, and the impugned action of the respondent No.2 directing re-fixation of the petitioner's pay fixed while granting him 2nd ACP on 01.02.2015 on his feeder post of Daftri does not warrant any interference.

12. As regards issue No. (ii), which pertains to the admissibility of the additional increment granted to the petitioner, the factual matrix delineated in the respondent No.2's written statement assumes significance. It transpires from a perusal of the written statement that, vide letter dated 03.08.2005, the pay scales to the non-judicial staff of certain categories (including Clerk) of subordinate courts in the State of Haryana were modified w.e.f. 01.08.2005. The pay scale to the post of Clerk was modified as under:-

Sr. No.	Name of the Post	Present Pay Scale	Modified Pay Scale
1. to 5.	XX	XX	XX
6.	Clerk	Rs. 3050-4590	Rs. 4000-6000 to graduate clerks in the Courts.
7.	XX	XX	XX

13. Thereafter, the Finance Department of the Government of Haryana, vide letter dated 19/20.10.2011, issued the following clarifications:-

> *"(i) The pay scales of the non judicial staff of Subordinate Courts in Haryana will the modified w.e.f. 01-04-2003 instead of the existing one i.e. w.e.f. 01-08-2008.*
> *(ii) The benefit of one advance increment will be given on the existing pay scales instead of the initial pay scales. This will be payable to all the Ministerial Staff other than to whom higher pay scales have been recommended. The new entrants shall also be entitled for the said benefit. Those employees who have reached stagnation shall also be granted the similar benefit."*

14. Subsequently, a further clarification was also issued by the Finance Department vide letter dated 22/24.04.2014, which is extracted hereunder:-

Sr. No.	Query raised	Reply/ Clarification given
4	Whether such officials who entered to the common category post in the scale of Rs. 5000-7850/- and 5500-9000/- after 01.04.2003 may be treating falling in the category of those officials as new entrants to service for giving the benefit of one advance increment, while in fact they are promotees and have not joined in common category post carrying scales of 5000-7850/- and 5500-9000/- as new entrants to service as prescribed in the recommendation of the Shetty Pay Commission after 01.04.2003.	No
5	Whether the officials, whose pay scales have not been revised on 01.04.2003 under this letter and enter to the common category post of the scale of 5000-7850 and 5500-9000/- are entitled for the benefit of one increment from the date of their entering into the common category post by way of promotion or they will be entitled to one increment from 01.04.2003 i.e. the date of	No

	implementation of Hon'ble Shetty Pay Commission under this letter?	

15. The clarifications (supra) clearly establish that the pay scales were to be implemented w.e.f. 01.04.2003, i.e., the date of implementation of the recommendations of the Shetty Commission's report. In the case at hand, the petitioner was promoted as Clerk on 22.05.2010 and, prior thereto, particularly during the period 01.04.2003, he was working on his feeder post, namely Daftri. Therefore, since he was not on the post of Clerk at the relevant period, the additional increment was not admissible to him. Accordingly, **issue No. (ii) is also answered in the affirmative.**

16. Now, let's deal with the last and final issue No. (iii), which pertains to the recovery of the excess emoluments paid to the petitioner owing to the wrong fixation of pay on account of erroneously granting him the benefit of 2nd ACP on the grade pay of Clerk as well as the additional increment.

17. At this juncture, it is deemed imperative to advert to some significant judicial pronouncements governing recovery of excess payments. The Hon'ble Supreme Court has, in a catena of judgments, restrained employer from recovering excess amount paid to employee by applying a wrong principle for calculating the pay/allowances or on the basis of particular interpretation of rule/order, which is subsequently found to be erroneous, by applying the principle of equity. Moreover, it has been specifically held that though an employee does not have any

right, the employer was, in equity, restrained to recover the amount.

18. In ***"Col. B.J. Akkara (Retd.) Vs. Government of India and Others", (2006) 11 SCC 709,*** the Hon'ble Supreme Court has delineated the principles governing relief against recovery of excess wrong payment from an employee. It has been held that such restraint is not founded upon any vested right of the employee but is rooted in equity and judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. It has been further held that a government servant, particularly one in the lower rungs of service, would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. The relevant observations are extracted hereunder:-

> *"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7.6.1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled [Vide Sahib Ram vs. State of Haryana [1995 Suppl.1 SCC 18], Shyam Babu Verma vs. Union of India [1994 (2) SCC 521], Union of India vs. M. Bhaskar [1996 (4) SCC 416], and V. Gangaram vs. Regional Joint Director [AIR 1997 SC 2776] :*
>
> > *a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*
> >
> > *b) 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.

28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that Respondents shall not recover any excess payments made towards pension in pursuance of circular dated 7.6.1999 till the issue of the clarificatory circular dated 11.9.2001. In so far as any excess payment made after the circular dated 11.9.2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."

19. Similarly, in ***"State of Punjab and Others Vs. Rafiq Masih***

(White Washer) and Others", (2015) 4 SCC 334, the Hon'ble Supreme Court has carved out specific categories of cases where recovery would result in grave hardship and would thus be impermissible. The relevant paragraph is extracted hereinafter:-

> *"18. 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."*

20. One of the situations of hardship, as recognized in ***Rafiq Masih's*** case (*supra*) and extracted hereinabove, which would govern employees on the issue of recovery, is that 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.

21. In the present case, it is undisputed that the petitioner neither engaged in any misrepresentation, fraud, deception, or concealment of material facts, nor had any role whatsoever in the fixation or computation of his pay. The claim of respondent No.2 for recovery is founded exclusively on the undertaking dated 09.01.2019 (Annexure R2/C), whereby the petitioner undertook that, in the event of his pay having been fixed in view of granting one additional increment on the post of Clerk being undergraduate, in terms of implementation of the Shetty Commission Report, any excess payment so made shall be refunded by him to the Government. However, no such undertaking was ever furnished by the petitioner at the time of grant of the benefit of 2nd ACP on the post of Daftri, which is a Class 'D' post. In such circumstances, permitting recovery from the petitioner would be wholly iniquitous and harsh. Accordingly, the **claim of respondent No.2 to initiate recovery proceedings against the petitioner on account of re-fixation of his pay is rejected.**

22. With the above observations, the instant writ petition stands disposed of.

(KULDEEP TIWARI)
JUDGE

March 27, 2026
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No