

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

\*\*\*\*

**CWP No.5240 of 2010**  
**Date of Decision: 31.03.2010**

\*\*\*\*

Krishna Devi

. . . . Petitioner

VS.

State of Punjab and others

. . . . Respondents

\*\*\*\*

**CORAM : HON'BLE MR.JUSTICE SURYA KANT**

\*\*\*\*

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

\*\*\*\*

Present: Mr. B.N. Sehgal, Advocate  
for the petitioner

Mr. B.S. Chahal, DAG Punjab

\*\*\*\*\*

**SURYA KANT J. (ORAL)**

- (1). The petitioner retired as a Junior Assistant from the Irrigation Department, Government of Punjab w.e.f. 31.08.2007 on attaining the age of superannuation. She seeks quashing of the orders dated 23.07.2001; 29.08.2007; 10.09.2007; and 23.09.2007 (Annexure P1; P2; P3 & P4, respectively), whereby, her pay has been refixed and consequential recovery is sought to be effected. She seeks refund of the amount so recovered from her leave encashment along with interest @ 18 % p.a.

- (2). While restricting her challenge *qua* the 'recovery' only, the petitioner's case is that she never misrepresented the facts nor played any fraud or deceived the authorities to secure any monetary gains and even if her pay was erroneously stepped-up contrary to Rules/Instructions, no recovery of the resultant emoluments already paid to her can be effected retrospectively.
- (3). The respondents have not filed any counter-reply/affidavit and are unable to admit or deny as to whether or not the petitioner misled the authorities to Step-up her pay and bring at par with her alleged juniors.
- (4). At the same time and in the absence of any material to the contrary, the petitioner is justified in relying upon Full Bench decision of this Court in **Budh Ram & Others vs. State of Haryana & Others, 2009(3) PLR 511**, wherein it is ruled that an employee who was not guilty of misrepresentation, fraud or deceiving the authority to secure monetary gains granted due to the mistake of that authority, deserves to be dealt with independently and cannot be called upon to refund to the Government the undeserved payment that he/she has already received.
- (5). In such like cases, the Full Bench concluded that :-

"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."*

- (6). Following the dictum in ***Budh Ram's*** case (supra), the writ petition is allowed in part; the action of the respondents in ordering recovery of the excess payments received by the petitioner as a result of Stepping-up of her pay or grant of ACP is hereby quashed. However, the impugned order(s) to the extent of re-fixation of his pay and consequential re-determination of the retiral benefits are upheld. The recovery, if any, already made from the petitioner shall be refunded to her within a period of four months from the date of receipt of certified copy of this order.
- (7). Since the respondents have not filed any counter-reply/affidavit, it shall be open to them to verify the records and if it is found that the petitioner had actually misrepresented the facts and/or played fraud etc. to gain the monetary benefits, to seek review of this order within a period of six months from the date of receipt of a certified copy of this order.
- (8). Ordered accordingly.

(9).                **Dasti.**

**(SURYA KANT)**  
**JUDGE**

**31.03.2010**  
*vishal shonkar*