

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.660 of 2018 a/w

CWP Nos. 1867 of 2018, 731 of 2019, 773 of 2019, 774 of 2019, 868 of 2019, 2321 of 2019, 2406 of 2019, 3527 of 2019, 76 of 2020, 203 of 2020, 321 of 2020, 802 of 2020, 860 of 2020, COPC No.52 of 2020, 160 of 2020, 182 of 201, 186 of 2021, CWP No.2176 of 2023, CWP No.3834 of 2023.

Date of Decision: 28.03.2024

1. CWP No.660 of 2018

Gopal Singh Kanwar & othersPetitioners

Versus

State of Himachal Pradesh & others ... Respondents

2. CWP No.1867 of 2018

Kedar Nath Sharma & othersPetitioners

Versus

State of Himachal Pradesh & others ... Respondents

3. CWP No.731 of 2019

Roshan LalPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

4. CWP No.773 of 2019

Desh Raj SharmaPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

5. CWP No.774 of 2019

Rajinder Singh ThakurPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

6. CWP No.868 of 2019

Madan KumarPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

7. CWP No.2321 of 2019

Rajinder SinghPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

8. CWP No.2406 of 2019

Mast RamPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

9. CWP No.3527 of 2019

Puran Chand SharmaPetitioner

Versus

H.P. State Co-operative Bank & others ... Respondents

10. CWP No.76 of 2020

Smt. Champa Sharma & othersPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

11. CWP No.203 of 2020

Smt. Sunita Kashyap & Ors.Petitioners

Versus

State of Himachal Pradesh & others ... Respondents

12. CWP No.321 of 2020

Shyam Singh Hetta & othersPetitioners

Versus

State of Himachal Pradesh & others ... Respondents

13. CWP No.802 of 2020

Mohan Singh & others	Petitioners
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Versus

State of Himachal Pradesh & others		... Respondents
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14. CWP No.860 of 2020

Garish Kumar Mehta & others	Petitioners
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Versus

State of Himachal Pradesh & others		... Respondents
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15. COPC No.52 of 2020

Islam Ali and another	Petitioners
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Versus

Dr. Pankaj Lalit		... Respondent
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16. COPC No.160 of 2020

Virender Khurana	Petitioner
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Versus

Dr. Pankaj Lalit		... Respondent
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17. COPC No.182 of 2021

Smt. Champa Sharma & others	Petitioners
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Versus

Akshay Sood & others		... Respondents
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18. COPC No.186 of 2021

Sunita Kashyap & others	Petitioner
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Versus

Akshay Sood & others		... Respondents
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19. CWP No.2176 of 2023

Harbans Lal Dubey & others	Petitioners
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Versus

State of Himachal Pradesh & others		... Respondents
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20. CWP No.3834 of 2023

Jagan Nath	Petitioners
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Versus

State of Himachal Pradesh & others		... Respondents
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Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner(s): M/s Lalit K. Sharma, Dushyant Dadwal, Ramesh Chand Sharma, Nitin Thakur, Mr. Banbhushan Singh and Tek Chand Sharma, Advocates, for the petitioner(s) in the repetitions.

For the Respondent(s): Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals with Mr. Ravi Chauhan, Deputy Advocate General, for the respondent- State, in all the petitions.

Mr. Manish Sharma, Mr. Sunil Mohan Goel, Mr. J.S.Bagga, Mr. R.L. Chaudhary, Mr. Kuldeep Singh and Mr. Hirdya Ram, Advocates, for the private respondents.

Sandeep Sharma, Judge(oral):

Since common question of law and facts are involved in the present petitions and similar relief has been claimed in all the petitions i.e. quashment of order dated 12.12.2017, passed by Registrar Co-operative Societies on the representation made by one Sh. Sanjay Mandyal in terms of judgment passed by this Court in CWP No.2055 of 2017, titled **Sanjay Mandyal versus State of H.P. and another**, decided

¹ Whether the reporters of the local papers may be allowed to see the judgment?

on 13.09.2017, same were heard together and are being disposed of vide this common judgment.

2. For having bird's eye view, facts, which are/were common in all the petitions, are that Grade-IV employees of the respondent-H.P. State Co-operative Bank came to be granted benefit of one special increment on account of their having done graduation in terms of Rule 21 of the Himachal Pradesh State Cooperative Bank Employees (Terms of Employment and Working Conditions) Rule, 1971. Though, aforesaid benefit of increment was given in the year 1996, but in the year, 2002 same was merged in the basic pay. Vide communication dated 27th June 2002 (**Annexure P-4**), aforesaid benefit of special increment, which was ordered to be merged with the basic pay was ordered to be treated as personal pay. Since petitioners herein already stood granted benefit in terms of un-amended provision, coupled with the fact that same stood merged in the basic pay, no recovery proceedings were initiated against the petitioners or other similar situate persons by the respondent-Bank after carrying out amendment in the aforesaid rules vide communication dated 27th June 2002, whereby admittedly aforesaid benefit of one special increment was ordered to be treated as personal pay.

3. Respondent-bank after having realized that there was no hand, if any, of the petitioners in grant of aforesaid benefit, rather same was extended to them pursuant to the policy decision taken by the bank, initiated no action for recovery, but one person namely, Sanjay Mandyal, private respondent No.4, approached this Court by way of CWP No.2055 of 2017, alleging therein that there is a huge scam in the bank, whereby undue benefit has been given to some ineligible persons, as a result thereof, huge financial loss has been caused to the public exchequer. Division Bench of this Court vide judgment dated 13.09.2017, though did not comment upon the correctness of the allegations levelled in the writ petition, but directed respondent No.2, Registrar, Co-operative Societies to decide the representation filed by aforesaid complainant. Pursuant to aforesaid direction issued by Division Bench of this Court, respondent No.2, constituted Inquiry Committee to look into correctness of the allegations levelled by the complainant. Inquiry Committee furnished its report to respondent No.2 on 4.05.2013 making therein following observations:-

“(a) That the Bank granted special increments to its employees in lieu of passing graduation degree after appointment in

Bank and allowed wrong stepping up of pay to the incumbents out of cadre;

(b) That the Bank granted special increment to its employee after their appointment in the bank and treating it as pay anomaly; and

(c) That the Bank granted special increment to its employee for passing graduation degree and merged the same in the basic pay.”

4. After having received aforesaid report, respondent No.2 forwarded the same to the Managing Director of the respondent-Bank, but allegedly no action was taken upon the same and as such, respondent No.2, proceeded to pass impugned order dated 12.12.2017, thereby directing Managing Director of the respondent-bank to take immediate required action on the corrective measures suggested in the enquiry report dated 19.06.2013 within three months from the receipt of this order. After passing of aforesaid order dated 12.12.2017 by respondent No.2, respondent-bank straightway without affording opportunity of being heard to the petitioners or similar situate persons, issued order of recovery (Annexure P-7 colly) dated 15.02.2018, annexed with CWP No.660 of 2018. In the aforesaid background, petitioners have approached this

Court in the instant proceedings, praying therein to set aside aforesaid order of recovery as well as order of re-fixation, if any, and order dated 12.12.2017 passed by respondent No.2, pursuant to which, proceedings of recovery, came to be initiated against the petitioners.

5. Pursuant to the notices issued in the instant proceedings, respondents No.3 and 4 have filed reply, wherein facts, as have been noticed hereinabove, have been not disputed, rather stands admitted. Though, careful perusal of the reply filed by the respondent-bank, if perused in its entirety, clearly reveals that there was no fault, if any, of the petitioners in grant of special increments, which subsequently came to be merged with the basic pay, but yet it has been stated that it is bound to take action pursuant to the order dated 12.12.2017 passed by respondent No.2.

6. Since despite there being stay order granted against the recovery, respondent No.3 attempted to recover the amount from the petitioners, they approached this Court by way of contempt petition, which are also being disposed of vide common judgment.

7. In reply to the contempt petitions, respondent-bank also stated that it had specifically pointed out difficulties to

respondent No.2, which may come in the implementation of the order passed by respondent No.2, but yet respondent No.2, directed the bank to go ahead with the recovery. It also came to be averred in the reply to the contempt petitions that though pursuant to the orders passed by this Court, recovery proceedings were stayed, but since respondent No2, directed it to pass order of re-fixation of pay, it had no option, but to proceed with the recovery proceedings.

8. Respondent No.4 i.e. complainant also filed reply, wherein similar set of allegations were levelled on the basis of which, inquiry was constituted and ultimately respondent No.2 passed order and as such, there appears to be no justification to make reference of the same, especially when allegations leveled in the same stand adjudicated by the competent authority.

9. Though, at this stage, Mr. R.L.Chaudhary, learned counsel representing the complainant, attempted to argue that allegations levelled by the complainant has not been looked into properly by the Inquiry Committee as well as respondent No.2, but since no challenge has been laid to the order passed by Registrar, Co-operative Societies by the complainant, he is estopped from making submissions, if any, with regard to

correctness of the findings returned by the Registrar Co-operative Societies as well as Inquiry Committee.

10. Since, Registrar Co-operative Societies vide Annexure P-2, dated 5.11.1996 had accorded approval for grant of one graduate increment to Grade-IV employees w.e.f.5.11.1996 and subsequently vide Annexure P-4, while approving the amendment in the rules had observed that basic pay shall be treated as personal pay, which is prospective in nature, it is not understood, how he was legally competent to pass impugned order Annexure P-8 dated 12.12.2017.

11. Having heard learned counsel for the parties and perused the material available on record, this Court is convinced and satisfied that decision to grant special increment was solely of the respondent-bank and there was no hand, if any, of the petitioners or similar situate persons. Since respondent-bank itself decided to extend benefit of special increment to the petitioners on account of their having passed graduation and such benefit was not only allowed to be enjoyed by the petitioners, rather same was also decided to be merged with the basic pay, petitioners herein could not have been penalized by initiating recovery proceedings. No doubt, record reveals that aforesaid decision to merge special

increment with basic pay was subsequently withdrawn on account of amendment, but at that stage, respondent-bank nowhere initiated proceedings, if any, for recovery for the reason that it was fully aware of the fact that decision to extend such benefit was of the bank and there was no hand, if any, of the petitioners and other similar situate persons.

12. Similarly, this Court finds from the record that Inquiry Committee though in its report made observation that bank erroneously granted special increment to its employee in lieu of passing graduation degree after appointment in the bank and allowed wrong stepping up of pay to the incumbents out of the cadre, but nowhere stated something specific against the petitioners. It nowhere came to be pointed out by the inquiry committee that petitioners or other similar situate persons had any kind of hand in making such decision, which was admittedly taken by the Board of Directors.

13. Leaving everything aside, if the observations/ recommendations/ suggestions made by the Inquiry Committee on the basis of which, respondent No.2 passed impugned order dated 12.12.2017, are perused in its entirety, it nowhere suggest that recommendation, if any, was ever made to recover the amount from the employees or such of

those employees, who were beneficiary of the decision taken by the respondent-bank to grant one special increment in lieu of graduation done by the petitioners and other similar situate persons, if it is so, there was otherwise no occasion, if any, for respondent No.2 to order recovery that too from the petitioners and other similarly situate persons.

14. This Court further finds from the order dated 12.12.2017, issued by respondent No.2 that direction was given to Managing Director to take corrective measures as suggested in the inquiry report dated 19.6.2013 and no specific direction ever came to be issued to the respondent-bank to initiate recovery proceedings against the petitioners and similarly situate persons. No doubt, in terms of aforesaid directions issued by the respondent No.2, respondent-bank could have taken steps for re-fixation of the pay, but certainly there was no occasion for it to initiate recovery proceedings, especially when there was nothing to suggest that aforesaid benefit was availed/ taken by the petitioners on some misrepresentation.

15. Though, bare reading of impugned order passed by respondent No.2, dated 12.12.2017, nowhere suggests that direction, if any, was ever issued to initiate proceedings, but

since some confusion has arisen on account of passing of order with regard action initiated by the respondent against the petitioners, coupled with the fact that no prejudice, if any, shall be caused to either of the parties on account of quashment of order, this Court finds no reason to let aforesaid order sustain, rather sustainance, if any, of the same would unnecessary complicate the things.

16. Leaving everything aside, action of the respondent-bank, thereby initiating recovery proceedings against the petitioners after inordinate delay is not sustainable in the eye of law on account of definite law laid down by Hon'ble Apex Court in catena of cases, wherein recovery after inordinate delay from Grade -IV employee has been held to be impermissible.

17. Reliance in this regard is placed upon the judgment passed by Hon'ble Apex Court in **State of Punjab and others vs. Rafiq Masih (White Washer) and other**, AIR 2015 SC 696, which in turn came to be relied upon by Division Bench of this Court in CWPOA No.3145 of 2019, titled as **S.S. Chaudhary vs. State of H.P. and others**, decided on 24.03.2022. In the aforesaid judgment, following parameters

came to be laid where recovery by the employer would be permissible/impermissible from the employee:-

“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 be 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/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."

18. Apart from above, issue with regard to recovery from Class-III & IV employees after their retirement stands duly settled by the Hon'ble Supreme Court in **Thomas Daniel Vs. State of Kerala & Others**, 2022 AIR (SC) 2153, decided on 02.05.2022 and in Civil Appeal No. 5527 of 2022, **Madhya Pradesh Medical Officers Association vs. State of Madhya Pradesh and others**, decided on 26.08.2022.

19. Consequently in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petitions and accordingly same are allowed and impugned order dated 12.12.2017 passed by respondent No.2, in all the petitions, is quashed and set-aside and amount, if any, recovered on account of the recovery proceedings, shall be refunded to the petitioners

alongwith upto date interest. Pending applications, if any, also stands disposed of.

**COPC No.52 of 2020, COPC No. 160 of 2020,
COPC No.182 of 2021 and COPC No. 186 of 2021**

19. In view of the order passed in CWP No.660 of 2018 alongwith connected matters, no orders are required to be passed in these contempt petitions and accordingly the same are dismissed alongwith pending applications, if any.

**(Sandeep Sharma),
Judge**

March 28, 2024
(shankar)