

**HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA****CWPOA No. 122 of 2020  
Decided on: 19.04.2021**


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Bahadur Singh .....Petitioner  
 Versus  
 State of Himachal Pradesh and others .....Respondents

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**Coram:****Ms. Justice Jyotsna Rewal Dua, Judge**Whether approved for reporting?<sup>1</sup>

For the petitioner : Mr. Prem P. Chauhan, Advocate.

For the respondents : Mr. Anil Jaswal, Additional Advocate General with Mr. Amit Dhumal, Deputy Advocate General.

**Jyotsna Rewal Dua, Judge**

The petitioner has challenged the action of respondents in ordering recovery of alleged excess wages paid to him for the period 31.03.2012 till 23.11.2012.

**2 Facts**

**2(i)** The petitioner was appointed as Part Time Water Carrier in respondent-Education Department on 23.9.2002. On 22.08.2012, the Secretary (Higher Education) to the Government of Himachal Pradesh issued a letter in respect to conversion of Part Time Water Carriers as daily wagers. Relevant portion of this letter reads as under:-

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment? Yes.

"I am directed to refer to the subject cited above and to say that the matter regarding policy for conversion of Part Time Water Carriers on daily wages in Education Department was under consideration of the Government for some time. Now, it has been decided by the Government to regulate the services of Part Time Water Carriers of the Department of Education in the following manners:-

1. The Part Time Water Carriers of the Department will be converted as Water Carriers-cum-Peon on daily waged basis after completion of 10 years of continuous service as per policy/guidelines of Department of Personnel issued from time to time for all other State Govt. departments. This will be revised to the period of 9 years as and when the same is issued by the DOP.
2. 983 numbers of Whole Time Contingent Paid posts of the department will be converted/upgraded as the regular Class-IV employees.
3. The services of PTWCs converted as Water Carrier-cum-Peon on daily waged basis will be regularized as regular Class-IV after completion of 8 years as per DOP policy issued from time to time for all other state Government department....."

**2(ii)** A policy dated 19.9.2012 regulating the services of Part Time workers provided following in respect of their conversion into daily wagers:-

"In continuation of this Department's letter of even number dated 02.06.2012, I am directed to say that the matter regarding conversion of part time workers to daily wage basis was under active consideration of the Government for some time past. Now, it has been decided by the Government that Part-Time workers having completed nine years continuous service as on 31<sup>st</sup> March 2012 in all Govt. Departments will be converted to daily wager subject to the observance of the following terms and conditions:-

- (i) Part-Time Class-IV employees having completed nine years of continuous services as on 31<sup>st</sup> March 2012 will only be made daily wager, Posts vacated by such part-time employees shall stand abolished.
- (ii) The orders to this effect will be issued at the level of Head of Departments after verifying the facts.
- (iii) For the determination of date of birth of the candidate concerned, criterion as laid down in Rule 7.1 of HPFR Vol-I shall be observed.
- (iv) The conversion to daily wager status shall only be from prospective effect i.e. after the date the orders are issued after completion of all codal formalities....."

**2(iii)** Petitioner, a Part Time Water Carrier appointed on 23.09.2002 had admittedly completed nine years of continuous service by

31.3.2012. As per averments made in the reply, he was given daily wage status w.e.f 23.11.2012. Arrears were paid to him w.e.f. 31.3.2012. Four years later i.e. on 24.6.2016, respondent No.2 directed respondent No.3 to scrutinize the matters in respect of any over payment in the form of arrears to those Part Time Water Carriers, whose services were converted into that of daily wagers. On the basis of this communication, respondent No.3 issued a recovery notice dated 27.7.2016 (Annexure A-1), directing respondent No.4-Block Elementary Education Officer concerned to recover the excess amount in lump sum from all such part time water carriers converted into daily wagers. Subsequent to this, after verification, respondent No.4 vide letter dated 9.8.2016 (Annexure A-4) directed Centre Head Teacher of the concerned schools to deposit the excess amount paid to the part time water carriers named therein, within a week. In this communication, name of the petitioner figured at Serial No.38. An amount of Rs.20,116/- is stated to be recoverable from him on account of excess payment of wages to him for the period in question. The recovery notices/communications dated 27.7.2016 (Annexure A-1) and 9.8.2016 (Annexure A-4) have been impugned in the present petition.

**3.** Learned counsel for the petitioner contended that services of the petitioner were required to be converted into daily wage basis w.e.f. 31.3.2012 and not w.e.f. 23.11.2012. The amount in question was, therefore, legitimately due towards the petitioner and was accordingly paid to him. Learned counsel further submitted that in any event there had been no

misrepresentation on part of the petitioner, therefore, in the facts of the case this amount could not be recovered from him. The amount in question was paid by the respondents themselves to the petitioner. In support of his contentions, learned counsel relied **upon (2015) 4 SCC 334** titled **State of Punjab and others Vs. Rafiq Masih and others.**

Learned counsel further submitted that similar recovery notices in various other cases of similar nature involving recovery of alleged excess payment of wages to Part Time Water Carriers on their conversion as daily wagers, have been quashed and set aside by the erstwhile learned H.P. Administrative Tribunal. The orders passed by the learned Tribunal have been accepted by the respondents and recovery proceedings have been dropped. In support of this submission, reliance was placed upon a list at Annexure D-1 and a judgment dated 14.9.2018 delivered by the Tribunal in OA No.304/2017. Learned Additional Advocate General on the basis of instructions imparted to him has not disputed this factual position.

**4.** Heard learned counsel for the parties and gone through the records.

**5(i)** The legal position in respect of recovery of amount by the employer allegedly paid to an employee in excess has been streamlined in **(2015) 4 SCC 334** titled **State of Punjab and others Vs. Rafiq Masih and others.** After noticing various precedents on the subject matter, Hon'ble Apex Court held as under:-

*“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.”*

**5(ii) In (2016) 14 SCC 267 titled *High Court of Punjab and***

***Haryana and Others Vs. Jagdev Singh***, Hon'ble Apex Court after noticing the

judgment in Rafiq Masih's case (supra) held that there is no bar in ordering

recovery from the retired employees or employees who are due to retire within

one year of the order of recovery, in case the officer to whom the payment was

made in the first instance was given notice that any payment found to have been

made in excess would be required to be refunded. It is also significant to notice

that in Jagdev Singh's case, the officer concerned had furnished an undertaking

to refund the excess payment if any. In such situation, it was observed by the

Court as under:-

*“9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of*

*the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.*

*11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”*

**5(iii)** The relief against recovery is granted by the Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But in a given case, if it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, in the facts and circumstances of any particular case, order for recovery of the amount paid in excess [refer **2009 (3) SCC 475** titled ***Syed Abdul Qadir & Ors Vs. State of Bihar & Ors.***]

**5(iv)** In the instant case, the petitioner was serving as Part Time Water Carrier w.e.f. 23.9.2002. His services were required to be converted into daily waged basis in terms of the applicable Government Policy on completion of nine years continuous service, in accordance with law. It is not in dispute that the petitioner had completed nine years continuous service as Part Time Water Carrier by 31.3.2012. As per un-controverted reply, petitioner's part time services were converted into daily wage basis w.e.f. 23.11.2012. Arrears on that count were paid to him w.e.f. 31.3.2012. It is not the case of the respondents that the petitioner had misrepresented regarding any relevant factual position. Arrears on

account of conversion of the petitioner's part time services as daily wage, were paid by the respondents themselves to the petitioner w.e.f. 31.3.2012. Even without going into the admissibility of the amount in question to the petitioner w.e.f. 31.3.2012, it can be safely concluded that the case of the petitioner squarely falls within category of Paragraph 18(i) of the Rafiq Masih's case (supra). Also, during hearing of the case, it was not disputed by the respondents/State that similar recovery notices in similar fact situation with respect to various other Part Time Water Carriers have been quashed and set aside by the erstwhile H.P. Administrative Tribunal in different judgments and that the respondents have accepted these judgments and have not assailed them any further. Petitioner was only a Part Time Water Carrier, whose services were converted as daily wager on 23.11.2012. Respondents took four years to notice the alleged excess payment of Rs.20,116/- made to the petitioner upon conversion of his part time services into daily waged basis.

For all the forgoing reasons, I find merit in the instant petition and the same is allowed. Impugned recovery notices dated 27.7.2016 (Annexure A-1) and dated 9.8.2016 (Annexure A-4) are quashed and set aside. Accordingly, the present writ petition stands disposed of, so also pending miscellaneous application(s), if any.

**Jyotsna Rewal Dua**  
**Judge**

April 19, 2021<sub>(rohit)</sub>