

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

Date of decision: 18.05.2016

CWP No.15099 of 2011

Chaman Lal Garcha

...Petitioner

Vs.

Punjab State Industrial Development Corporation Limited

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anurag Goyal, Advocate, for the petitioner.

Mr. Vikas Mohan Gupta, Advocate, for the respondent.

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

RAJIV NARAIN RAINA, J.

The principles underlying the “Assured Career Progression Scheme” in lieu of promotion on completion of 4/9/14 years of service in a cadre is meant to tide over stagnation and absence of promotional avenues in service. The petitioner was appointed as an Assistant Accountant in the year 1977. He was promoted as an Accountant in 1981. In 1986, he was promoted as Deputy Manager (Finance) and in 1989 as Manager (Finance). That was not the end of his promotions. He was further promoted in 1994 as AGM (Accounts) with effect from 09.10.1992. In 1997, the petitioner was promoted as Deputy General Manager (Accounts). His last promotion as Deputy General Manager (Accounts) with effect from 09.10.1997 according to the petitioner entitles him for benefit of ACP after completion of 4 years

of service on 09.10.2001 and thereafter the second ACP on completion of 9 years of service on 09.10.2006 and that too on the basis of revision of pay scales of employees of Government of Punjab as well as Public Sector Undertakings. This is the claim of the petitioner.

He has approached this Court against the pay slip issued to him in the month of May, 2011 whereby the petitioner's pay, in the basic pay of Rs.52,030/- with grade pay of Rs.8800/- and gross salary of Rs.1,19,738/- is shown reduced to basic pay of Rs.44,790/- in the grade of Rs.8800/- with gross salary of Rs.92,759/-. He says that he was taken aback by the pay slip drastically reducing his pay. The further complaint is that it was issued without prior intimation and in utter violation of the principles of natural justice, complaining that no show cause notice was issued to the petitioner nor any reason furnished justifying the reduction. Feeling aggrieved, he represented in July, 2011 short of his retirement in the month of September, 2011. The action of the respondents, it is said, will not only affect his monthly pay, but also his retiral benefits. He made two other representations in August, 2011 demanding justice. The question is was injustice done to him?

The respondent – Corporation has contested the case by filing a written statement. It is averred that prior to 01.01.2006, the petitioner was working in the pay scale of Rs.13,500-16,800/-. With the implementation of the ACP scheme with effect from 01.11.2006 including benefits of revised pay scale on completion of 4/6 years of service was due to be given to him with effect from 01.11.2006. However, by inadvertence the petitioner was given revised pay scale on completion of 4 years of service as Deputy General Manager with effect from the date of completion of 4 years service

from the date of promotion as Deputy General Manager i.e. 09.10.1997. The petitioner was given the first revised scale of Rs.14,300-18,600/- with effect from 09.10.2001 while second revised scale under ACP on completion of 9 years of service with effect from 09.10.2006. However, while implementing ACPs instead of fixing the pay with effect from 01.11.2006 pay fixation was done with effect from date of completion of 4/9 years of service from the dates of promotion though payment of salary was made as per fixation only with effect from 01.11.2006. Thereafter, on revision of pay scale under the new pay structure of 2009 with effect from 01.01.2006, pay scale of an employee which was to be revised with effect from 01.01.2006 was one in which an employee was as on 01.01.2006 to be done without taking into account the grant of next higher pay scale under the ACPs prior to 01.01.2006. The revised pay scale in the new pay structure with effect from 01.01.2006 was the pay scales of Rs.14,300-18,600/- and Rs.14,300-20,100/- which inadvertently had been granted to the petitioner on completion of actual number of years of service i.e. 4/9 pursuant to implementation of the ACPs in the Corporation. By mistake, the petitioner was given the revised pay scale of Rs.37,400-67,000/- + 8700/- grade pay on revision of pay scale of Rs.14,300-18,600 / 14,300-20,100; the pay scale which had been granted to the petitioner under ACP on completion of 4/9 years of service respectively from the date of appointment as DGM although the same was to be given w.e.f. 01.11.2006 without taking into account the grant of next higher pay scale under the ACPs prior to 01.01.2006. The anomaly was detected late and the correction was made fixing the pay of the petitioner in the admissible pay scale as per rules. This is what is reflected in the impugned pay slip. This oversight led to over payment, which required rectification. This is how the pay of the petitioner was reduced.

According to the oversight, excess salary was drawn by the petitioner in May, 2011.

Aggrieved by reduction in pay, the petitioner has approached this Court. There is a stay order in his favour only against recovery of money. The ACP scheme was applicable to those employees who were unable to get time scale benefit of promotion due to lack of promotional avenues or other such reasons, but in the respondent – Corporation the benefit of ACP scheme had been given to those officials, who had been given time scale promotion and still further that in some cases where an employee had been given an increment under Rule 7.7 of the Service Rules of the Corporation (for meritorious service) the colleagues / and or Seniors of such employees had also taken benefit of pay protection by misrepresentation and by hiding the facts. There were complaints of drawing HRA by certain employees, who were availing Government accommodation allotted to their spouses, which was against the Government instructions.

On representation filed by the petitioner and 29 other employees, they were granted opportunity of hearing by the then Managing Director of the Corporation on 23.09.2011. Pursuant to grant of personal hearing, the matter was referred to the Principal Secretary, Department of Industries and Commerce, Punjab bringing it to the notice of the State Government that while examining the cases it had come to light that wrong pay fixation was done and they were getting benefits in violation of Government rules. It is not necessary to dilate on the matter further since the complaint in this petition is with respect to reduction in pay alone.

I find nothing wrong in the action of the respondents in reducing pay as per Rules. The action of the Corporation cannot be faulted

merely on the ground that pay was reduced by “verbal order” of recovery from pay but when pay scales are kept in one hand and the ACP scheme in the other and the two refuse to match or permit over payments then action taken is in consonance with law and admits no exception to protect error committed in award of extra money. The petitioner cannot be made to win on a technicality of law of violation of principle of natural justice, without notice, without hearing when unjust enrichment is involved. Stretching the principles of natural justice would not be necessary as that would be a “useless formality”. For “useless formality theory” or “empty formality” principle; See Dharampal Satyapal Ltd. Vs. CCE, (2015) 8 SCC 519.

For the foregoing reasons, the interim order staying further recovery passed on 18.08.2011 is made absolute in view of the law in State of Punjab & others Vs. Rafiq Masih & others, AIR 2015 SC 696. No recovery would be effected of past transactions in which the petitioner did not participate in and practiced no deceit, the fault lying in Corporation not keeping its eyes wide open. However, reduction in pay is justified and the action of the respondent - Corporation is not found illegal or arbitrary and to the contrary within the law in the ACP scheme in view of a slew of promotions in the petitioner’s splendid service career. Consequently, while allowing the petition to the extent of protecting recovery of money paid, the instant petition is dismissed on reduction of pay which will hold good.

18.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE