

In the High Court of Punjab and Haryana at Chandigarh

CWP No.25616 of 2014

Date of decision: November 27, 2018

Rakesh Kumar Gautam

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. N.S. Panwar, Advocate for the petitioner.
Mr. Sunil Kumar Vashisth, Deputy Advocate General,
Haryana.
Mr. Pankaj Gupta, Advocate for respondent No.2.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the petitioner is challenging the order (Annexure P-2) dated 22.12.2008 by which a recovery of ₹39,175,50/- has been made from the retiral dues of the petitioner.

As per the facts mentioned in the petition, the petitioner was working as a District Manager with the Haryana Agro Industries Corporation Limited. On attaining the age of superannuation, the petitioner retired on 31.12.2008. Before the retirement of the petitioner, the respondent passed an order on 22.12.2008 that a recovery of ₹39,17,550/- is due from the petitioner. The petitioner alleges in the writ petition that the said order of recovery has been

passed without affording any opportunity of hearing and without following the due procedure of law as envisaged in the Rules.

Counsel for the petitioner states that no show cause notice whatsoever was given before passing the order of recovery (Annexure P-2) and the said amount was deducted from the retiral dues of the petitioner.

Counsel for the petitioner further states that one Sh. Sat Narain was also working alongwith the petitioner, upon whom also the recovery was imposed. Out of the total recovery, 30% was attributed to the petitioner and 70% to Sh. Sat Narain. Total recovery was of ₹1,23,205/- out of which ₹96,505/- were recovered from Sh. Sat Narain and remaining amount of ₹39,175.50 were recovered from the petitioner.

Notice of motion was issued and the respondents have filed the reply.

In the reply as well as during the course of hearing today, it has been admitted that no procedure was followed as required under law before effecting the recovery. No show cause notice was given to the petitioner before effecting the recovery. It has been admitted by the respondents that CWP No.1513 of 2011 filed by Sat Narain challenging his order of recovery has been allowed by this Court on 27.01.2011.

I have heard the counsel for the parties and gone through the record of the case.

Once it is an admitted case that before passing the order of recovery, no procedure was followed and no opportunity of hearing was granted to the concerned employee, the said order of recovery is liable to be set aside on the ground of non-observance of Rules of Natural Justice. It is a settled proposition of law that any order which visits any employee with the Civil and penal consequences, the opportunity of hearing is must. In this regard, reliance can be placed on decision of this Court in **Lekhu Singh Vs. The Punjab SC Land Development & Finance Corp., Chd. 1994(1) SCT 748.**

The relevant paragraph is as under:

“One of the basic principles of natural justice is 'hear the other side'. Initially judicial opinion was that grant of an opportunity was required only while passing a judicial order or quasi-judicial order and that in a purely administrative function/order, opportunity had no role to play. However, with the efflux of time, the grant of an opportunity has become a requirement of law even for a purely administrative act. Still further, the concept of opportunity being a basic requirement has been extended to every action which has adverse civil or penal consequences. Alteration of seniority and reversion have been held to have civil consequences and consequently, alter-action of seniority or reversion from a given rank without the grant of an opportunity have been held to be vitiated, being violative of basic principles of natural justice.”

In the present case, before order of recovery, no opportunity of hearing was granted and hence the order of recovery

is liable to be set aside on the ground of violation of principles of natural justice. The order (Annexure P-2) dated 22.12.2008 is liable to be set aside on this ground. Not only this, the total recovery to be made by the respondents was ₹1,23,205/-. The said recovery was proportioned between two employees i.e. 30% on the petitioner and 70% on Sat Narain. Sat Narain also filed a writ petition challenging the order of recovery, which order was set aside by this Court on 27.01.2011 while deciding CWP No.1513 of 2011. If 70% of the recovery has already been set aside by this Court as non-permissible, the remaining 30% which has been recovered from the petitioner is also liable to be set aside.

In view of the above, the order dated 22.12.2008 (Annexure P-2) is set aside. Recovery which has been made from the petitioner without observing the Rules of Natural Justice is not valid. The respondents are directed to return the recovered amount to the petitioner within a period of two months from the date of receipt of a certified copy of this order. The petitioner will be entitled for interest on the said amount @ 6% per annum from the date it was recovered till the payment is made. No order as to costs.

The petition stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

November 27, 2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No