

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

(201)

CWP-8311-2017

Date of Decision: December 03, 2018

Balwinder Singh

..Petitioner

Versus

Market Committee Bariwala and another

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tarun Singla, Advocate, for the petitioner.

Mr. Sanjeev Sharma, Advocate, for the respondents.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present case, the petitioner is challenging the order dated 05.12.2016 (Annexure P-18) by which a recovery of Rs.6,43,586/- has been imposed upon the petitioner by the respondents. The main grievance of the petitioner in the present writ petition is that the said recovery has been imposed by the respondents after the retirement and that too without giving any opportunity of hearing to the petitioner. The petitioner retired on 31.07.2015 and the order of recovery was passed on 05.12.2016.

Reply to the writ petition has been filed by the respondents.

In the reply, the respondents have mentioned that in the present case, before effecting the recovery, no hearing was required for. The contention which has been raised by the respondents is that under the instructions dated 13.10.2014, the petitioner was only entitled for the arrears from the date of application but inadvertently, the petitioner was given full arrears, which needed to be recovered as the same was against the instructions dated 13.10.2014 and therefore as the matter is clear that the petitioner was not entitled for what he has been paid, there was no need of grant of opportunity of hearing.

I have heard learned counsel for the parties.

In this regard, reliance can be placed on the judgment of this Hon'ble Court rendered in **Lekhu Singh Vs. The Punjab SC Land Development and Finance Corp. Chandigarh, 1994 (1) S.C.T. 748.**

Relevant paragraph is reproduced 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, alteration 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.”

It is settled proposition of law that whenever any order which causes prejudice to an employee is to be passed, the rules of natural justice needs to be observed. In the present case, the order by which the recovery has been imposed i.e. Annexures P-18 and P-20, the same causes civil consequences and the same could not have been passed without an opportunity of hearing. An employee has right to represent and make his submissions in respect of any proposed order to be passed, which cannot be taken away merely on the ground that as per the respondents, the employee

was not entitled for amount which was inadvertently paid to him.

In view of the above, order Annexures P-18 and P-20 are set aside on the ground that the same have been found in violation of rules of natural justice. However, the respondents are given liberty to pass fresh appropriate order after giving due opportunity of hearing to the petitioner in respect of the proposed action.

The writ petition is allowed, in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

December 03, 2018
harsha

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