

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP-1928-2007 (O&M)

Surinder KaurPetitioner

Versus

State of Punjab and othersRespondents

2. CWP-4127-2007

Darshan Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

Date of decision: - 19.08.2019

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Jasmeet Mehra, Advocate,
for Mr. L.M. Gulati, Advocate
for the petitioner in CWP No.1928-2007.

Mr. Ranjivan Singh, Advocate with
Ms. Kanika Toor, Advocate
for the petitioner in CWP-4127-2007.

Ms. Sunint Kaur, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

By this common order, above-mentioned two Civil Writ
Petitions are being disposed of in the light of common question of law
and similar facts involved. For the sake of convenience, the facts are
being extracted from CWP No.1928-2007 titled 'Surinder Kaur Vs. State

of Punjab and others'.

In CWP-1928-2007, husband of the petitioner was working in the Punjab Police and while on duty, her husband was killed by terrorists on 23.11.1990. After the death of her husband, petitioner was entitled for certain benefits such as free education to the children upto the University level; 2% reservation of LIG houses; allotment of residential and commercial sites and shops at reserved price; grant of interest free loan; issuance of yellow cards; grant to permit of plying Mini Buses; and allotment of fair price shops. It has been averred that though these benefits should have been given to the petitioner, but none of these benefit was extended to her, after the death of her husband. Only benefits, which was extended to the petitioner after the death of her husband was sum of ₹4,10,632/- as family pension.

The grievance of the petitioner is that suddenly, without giving any show cause notice, respondents reduced the family pension of the petitioner and also effected the recovery to the tune of ₹1,49,640/-. A specific averment has been made by the petitioner in paragraph No.8 of the writ petition that no show cause notice whatsoever was given to her before effecting the recovery. A challenge in the present writ petition is to the action of the respondents in reducing the pension of the petitioner and the consequent recovery from her that too without issuing any show cause notice and without affording any opportunity of hearing.

Similarly in CWP No.4127 of 2007, pay of the petitioners was refixed by withdrawing the benefit of ACP Scheme on completion of

8/16/24/32 years of service. After withdrawing the said benefit, the pay of the petitioners was fixed by the respondents. It is the case of the petitioners that before refixing their pay, no show cause notice whatsoever was given and they were not given any opportunity to present their case, except petitioner No.2, who was given a letter on 11.03.2005 (Annexure P-3) and that too after the refixation of his salary as to why the recovery should not be done. The benefit, which was granted to the petitioners by giving them the benefit of ACP in the year 2002, was withdrawn in the year 2005 and upon withdrawal of the said benefit, the pay of the petitioners was refixed and the excess amount was sought to be recovered.

At the time of hearing, counsels for the petitioners in both the writ petitions states that petitioners restricts their challenge to the recovery, which was ordered to be done from them.

Upon notice of motion, reply was filed by the respondents.

In the reply in CWP-1928-2007, the respondents-State have stated that after the husband of the petitioner died in extremists attack on 23.11.1990, pension was sanctioned to the petitioner on 13.05.1991. The family pension, which was sanctioned to the petitioner was ₹1600/- per month, which the petitioner was to get from 24.11.1990 till 30.11.2003, when her husband was to superannuate. After the said date from i.e. from 01.12.2003, petitioner was entitled to the family pension of ₹900/- per month, which her husband would have drawn had he remained alive on the said date. It has been mentioned that inadvertently, the family pension

@ ₹1600/- per month was being paid to the petitioner and by the time, the mistake was realized by the respondents that an excess payment of ₹1,49,640/- had been paid to the petitioner. The respondents have stated that the payment of excess amount was inadvertent and therefore, the same could have been recovered. In respect of grant of no opportunity to the petitioner before effecting recovery, the reply is silent. Nothing has been placed on record as to whether before effecting recovery from the petitioner, whether any show cause notice was given to the petitioner or not.

In the reply, the stand of the respondents is that the benefit of ACP Scheme was wrongly extended to the petitioners and keeping in view the clarification, which was given by the State, as to how, the benefit of ACP is to be given from the date on which they were in selection grade, a letter was written to all the departments in February, 2005 to rectify the mistakes and upon rectification of the mistakes, the pay of the petitioners was refixed and the excess recovery was sought to be done.

I have heard counsel for the parties and have gone through the record with their able assistance.

The only question, which is to be decided by this Court in the present writ petition, is as to whether, the respondents were entitled to recover the excess payment in the manner it was done.

From the pleadings in CWP-1928-2007, it is clear that family pension @ ₹1600/- per month was fixed by the respondents and the same

was to be paid till the late husband of the petitioner would have attained the age of superannuation i.e. 30.11.2003. It was the mistake of the respondents that the petitioner was paid the family pension @ ₹1600/- even after 30.11.2003. Petitioner is not instrumental in any manner in getting the said amount. The duty to reduce the family pension from ₹1600/- per month to ₹900/- per month w.e.f. 01.12.2003 was of the respondents themselves. If the respondents made the payment inadvertently and there was no fault on the part of the petitioner, the recovery could not have been done by the respondents of the excess payment given to the petitioner. Even otherwise, it is a settled principle of law that the recovery cannot be done without observing the rules of natural justice. It has been admitted by the respondents that no show cause notice was ever given to the petitioner. The averments, which have been made in paragraph No.8 and 14 of the writ petition, have not been controverted by the respondents and plea that no show cause notice whatsoever was given before recovering the amount of ₹1,49,640/- is also not rebutted by the respondents. It is a settled principle of law settled by the Division Bench of this Court that any order, which causes prejudice to an employee, cannot be passed without observing the rules of natural justice.

This Court in case Lekhu Singh Vs. The Punjab SC Land Development & Finance Corporation, Chandigarh, 1994(1) S.C.T. 748, has held that where the basic requirement of opportunity of hearing has not been afforded while passing adverse order, having penal/civil

consequences, the said order cannot be sustained in the eyes of law. The relevant paragraph of the judgment 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.”

The case of the petitioner in CWP-1928-2007 in respect of the recovery being done without following the rules of natural justice is squarely covered by the abovesaid principle of law. Further, nothing has been placed on record by the respondents either with the reply or at the time of hearing that any show cause notice was given to the petitioner before effecting the recovery.

The next question, which is being raised before this Court in these writ petitions is that whether upon refixation, recovery can be done from the petitioners or not, is no longer *res integra*.

The Hon'ble Supreme Court in State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195 has laid down the guidelines as to how and under what circumstances the recovery

can be done from the employees. The relevant part of the said judgment is as under: -

“12. 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.”

A bare perusal of the above reproduction shows that as per law, no recovery can be ordered from Class III and IV employees.

In CWP-4127-2007, petitioners are working as Veterinary Pharmacists, which is a Class III post. Once the petitioners were working on a Class III post, no recovery could have been done from them even by rectifying the mistakes by the respondents. Similarly as recovery was being done by refixation of family pension in CWP No.1928 of 2007,

same is being done from a dependent of a retired employee after the retirement and that too from the family pension, which is also not permissible under Clause (ii) of para 12 of the judgment reproduced above.

Counsel for the respondents vehemently states that the orders refixing their salaries and consequent recovery were passed in the year 2005, whereas the judgment in **Rafiq Masih's case (supra)** was delivered in the year 2014 and the same cannot have a retrospective effect for the recovery, which are to be done from the year 2005.

This argument is also not going to help the respondents-State keeping in view the order passed by the Division Bench in **LPA No.2448 of 2016** titled as '**State of Punjab and others Vs. Amrik Singh and others**', **decided on 09.08.2016**, wherein, the question of applicability of **Rafiq Masih's case (supra)** with retrospective effect has been considered and the Division Bench has passed the following order: -

“The contention that the principles laid down in ***Rafiq Masih*** will apply ‘prospectively’ cannot be accepted as no such limitation has been imposed by the Hon’ble Supreme Court. Taking into consideration the current status of the respondents, namely, that many of them have retired or are near retirement and the fact that they are holding Group ‘C’ & ‘D’ posts, we are satisfied that no interference in the discretion exercised by learned Single Judge is called for.”

The above-said judgment will also be applicable retrospectively upon the petitioners as well and therefore, the said argument raised by the respondents-State is liable to be rejected.

In view of the above, though, the petitioners have already given their claim for refixation, but the recovery of the excess amount on refixation is held to be bad and is consequently set aside. If the respondents have recovered any amount from the petitioners after the refixtion, the same shall be refunded back to the petitioners within a period of two months from the date of receipt of certified copy of this order.

Present writ petitions stand allowed in the above terms.

As the present writ petitions have been allowed, the pending civil misc. applications, if any, become infructuous.

August 19, 2019
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**(HARSIMRAN SINGH SETHI)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	Yes