

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

CWP No. 10565 of 2013.

Date of Decision: 08.02.2019.

Joginder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN.J.

The instant petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 15.03.2013 (Annexure P-6), whereby pay of the petitioner was reduced with effect from 01.01.2006 and his benefit of placement in higher pay scale under ACP Scheme on completion of 9 years service was withdrawn.

The petitioner joined as Pharmacist on 29.07.1980. He was given placement in the higher scale with effect from 01.01.1989 vide order dated 23.05.1997 as per instructions dated 21.08.1990, whereby it was stipulated that 50% posts be placed in the scale of 1640-2925 with designation as Senior Pharmacist. With the grant of revised pay scale on the recommendation of 5th Punjab Pay Commission with effect from 01.01.1996, the petitioner was granted

revised conversion scale of Rs. 5440-8925 in lieu of Rs. 1640-2925.

He was promoted to the post of Chief Pharmacist on 15.05.2007.

The petitioner was allowed the benefit of Assured Career Progression vide order dated 12.12.2012 on completion of 9 years service with effect from 01.11.2006 as per instructions dated 03.11.2006. His pay was re-fixed.

The respondent No. 4 passed the impugned order dated 15.03.2013 (Annexure P-6) whereby pay of the petitioner was reduced with effect from 01.01.2006. As per the order, his grade pay was reduced from 3800/- to 3600/- with effect from 01.01.2006 and from Rs. 4400/- to 3800/- with effect from 01.11.2006 along with the withdrawal of 9 years' placement under ACP Scheme.

It is contended that the petitioner was rightly given the above benefit as per his entitlement by the competent authority without any misrepresentation and fraud. Before passing the impugned order (Annexure P-6), no notice or opportunity of hearing was afforded to him. No reason has been assigned to as why his pay has been reduced. The order has been passed behind his back in total disregard to the principle of natural justice. The counsel for petitioner argued that the action of the respondents is against the ratio of law laid down by this Court in **Balwant Singh Kataria Vs. State of Haryana, 1997 (3) SCT 475 (P&H) (DB)** and the decision dated 05.10.2018 passed in **C.W.P. No. 19636 of 2014 titled Khusdeep Kaur and Ors. Vs. State of Punjab & Ors.**

The respondents filed their reply, wherein it has been stated that the pay of the petitioner was wrongly fixed vide the order dated 12.12.2012 and the mistake has been rectified by reducing his pay vide order dated 15.03.2013. The State is entitled to rectify the mistake and to recover the excess amount paid to the petitioner.

Heard

In **Balwant Singh Kataria Vs. State of Haryana**, **1997 (3) SCT 475**, it has been observed as under:-

“3. Learned counsel appearing for the respondents submits that it was considered by the respondents that the petitioner had no reply to submit; as such they were justified in passing the impugned order without affording the petitioner an opportunity of being heard. We do not agree with this general proposal of law propounded before us. The compliance of the principles of natural justice cannot be dispensed with under any circumstances. It is also settled position of law that the benefits once conferred upon a civil servant, even though under erroneous assumptions, cannot be withdrawn without affording him at least the opportunity of hearing. It is not for the employer to decide as to what possible defence can be taken by the civil servant after the issuance of show cause notice. It is also not open to the employer to decide himself that as according to him, the employee would not have any defence to the proposed action, the compliance of the principles of natural justice was not necessary. If the power to decide as to whether the affected

employee would have any defence or not, is given to the employer, the basic principle of natural justice would be negated and frustrated. The principles of natural justice can neither be put in strait-jacket, nor allowed to be measured or weighed by the person or authority responsible for compliance of the aforesaid principles.

4. In the instant case, none had complained against the promotion of the petitioner to the post of Manager, vide Annexure P-1. The Court while deciding the aforesaid writ petition (No. 14146/1993) had not issued any direction to the respondents to determine as to whether the petitioner was rightly promoted to the post of Manager or not. In the absence of such complaint or direction, if the respondents chose to reconsider their action by reviewing the orders already passed, which amounted to reversion of the petitioner, they were under constitutional obligation to afford the petitioner an opportunity of hearing before passing the said order. The respondents have miserably failed to justify their action, by which the petitioner has been reverted from the post of Manager, vide Annexure P-4.”

As per record, initially the pay of the petitioner was fixed by the department as per Government Instructions and the petitioner had been continuously drawing his salary. Admittedly, the impugned order was passed without giving any show cause notice or opportunity of hearing, whereby the pay of the petitioner was reduced with retrospective effect causing financial loss to the petitioner and the

same is in violation of principles of natural justice. The same view has been taken in the decision dated 05.10.2018 passed in *C.W.P. No. 19636 of 2014 titled Khusdeep Kaur and Ors. Vs. State of Punjab & Or.*

In view the above position, the present petition is allowed. Consequently, the impugned order dated 15.03.2013 (Annexure P-6) is hereby set aside. The petitioner is held entitled to all consequential benefits. However, the respondents are at liberty to issue action oriented notice to the petitioner and take action thereupon, if so advised, after affording opportunity of hearing and complying with the principles of natural justice.

08.02.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No