

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17536 of 2016

Date of decision: 27.11.2019

Laxmi Narayan

.... Petitioner

versus

Punjab State Power Corporation Limited and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.D.Bawa, Advocate with
Mr. Rohit Sharma, Advocate
for the petitioners.

Mr. Y.P. Khullar, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. .

The grievance raised by the petitioner in the present writ petition is that the respondents have passed order dated 27.04.2015 (Annexure P/2) after his retirement, by which the benefit of proficiency step up granted vide order dated 22.6.2004 in the cadre of Clerk after rendering service for a period of 9/16 years has been withdrawn and that too without giving any opportunity of hearing to the petitioner.

The facts as mentioned in the writ petition are that the petitioner joined on the post of Peon initially on adhoc basis on 06.02.1978 and, thereafter, his services were regularised on 05.08.1978. Petitioner continued working on Class IV post till 21.10.1987, when he was promoted to the post of Lower Division Clerk (LDC), on which post petitioner continued working till his retirement on 31.12.2012. While working on the post of Lower Division Clerk (LDC), the petitioner was granted benefit of proficiency step up /time

bound promotional scale vide orders dated 22.6.2004 and 29.12.2005. The said time bound promotional scale was granted to the petitioner keeping in view Finance Circular dated 02.03.1993 (Annexure P1/), according to which time bound promotional scale was to be granted in the cadre of Clerk, in case the said benefit has never been extended to an employee while working on Class IV post. As the petitioner was not granted the benefit of time bound promotional scale in the cadre of Peon, the said benefit was extended to him in the cadre of Clerk. Petitioner continued to get the said benefit till his retirement. After the retirement of the petitioner, without giving any opportunity of hearing, the respondents have passed an order dated 27.04.2015 (Annexure P/2) cancelling the order granting him the time bound promotional scale in the cadre of clerk and he was granted the benefit of proficiency step up in the cadre of Class-IV, thereby, reducing the salary of the petitioner and, consequently, pensionary benefits.

The challenge is to the said order dated 27.04.2015 (Annexure P/2) on the ground that impugned order is not only contrary to the Finance Circular dated 02.03.1993 (Annexure P1/) but also against the rules of natural justice as same was passed without giving any opportunity of hearing to the petitioner. Learned counsel for the petitioner further argues that upon refixation of pay and pensionary benefits of the petitioner, keeping in view the impugned order dated 27.04.2015 (Annexure P/2), the respondents have already recovered a sum of Rs.4,97,435/- from the pension of the petitioner, which act of the respondents is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India *State of Punjab & Others vs Rafiq Masih (White Washer) etc (2014) 8 SCC 883*

Upon notice of motion, respondents have filed reply and the

averments made in paragraph-9 of the writ petition have been admitted as a matter of record by the respondents.

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

It is the settled principle of law that no order can be passed against an employee without observing the rules of natural justice. In the present case, after the retirement of the petitioner, the respondents have withdrawn the benefits, which were extended to the petitioner approximately seven years prior to his retirement. Before withdrawing the benefits, it was incumbent upon the respondents to observe the rules of natural justice by issuing a show cause notice and giving an opportunity of hearing to the petitioner to raise objection qua said proposed act of withdrawal of the benefits. It is only after considering the reply filed by an employee, any order can be passed against an him/her. A Division Bench of this Court in **Lekhu Singh vs. The Punjab SC Land Development and Finance Corporation, Chandigarh 1994 (1) S.C.T. 748** has held that an order causing prejudice to an employee cannot be passed without following rules of natural justice. Relevant paragraph of the said order 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, impugned order Dated 27.4.2015 (Annexure P/2) has been passed against the petitioner without following rules of

natural justice, hence, the same cannot be sustained in the eyes of law.

Even otherwise, upon refixation of salary, the respondents could not have recovered the amount, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **Rafiq Masih's case (supra)**. It has been admitted by the respondents that recovery of sum of Rs.4,97,435/- has been effected in the year 2015 and as per the law laid down in Rafiq Masih's case (supra), recovery from a retired employee is impermissible. Further, a recovery from a employee who is working on Group-C or Group-D post is impermissible. Further, recovery in pursuance to an order, which is five years old is also impermissible. Relevant paragraph of the judgement is as under:-

“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.

In the present case, the petitioner was working on Class-C post at the time of his retirement. Further, at the time of recovery, the petitioner

had already retired; further, the orders giving benefit to the petitioner were passed in the years 2004-05, whereas, order withdrawing the same was issued by the respondents in the year 2015 i.e. after a period of ten years, therefore, recovery which was being effected after withdrawing the benefit which was extended ten years prior to the date of withdrawal cannot be effected. Thus, the case of the petitioner is squarely covered by the clauses (i), (ii) and (iii) of the judgement in Rafiq Masih's case (supra).

Keeping in view the above, as the impugned order dated 27.04.2015 (Annexure P/2) has been passed without following rules of natural justice, hence, are contrary to the settled principle of law laid down in Rafiq Masih's case (supra), thus, the same is set aside and the consequential recovery, which has been effected in pursuance to the impugned order dated 27.04.2015 (Annexure P/2) from the petitioner is also set aside.

Respondents are directed to refund the amount, which has been recovered from the petitioner in pursuance to impugned order dated 27.04.2015 (Annexure P/2) within a period of two months from the date of receipt of certified copy of this order.

The present writ petition stands allowed in above terms

(HARSIMRAN SINGH SETHI)
JUDGE

27.11.2019
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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |