IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1395-2018 (O&M)
Date of decision: - 08.02.2019

Amar Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Harinder Singh Aujla, Advocate,
for the petitioner.

Ms. Deepali Puri Sandhu, Additional Advocate General, Pb.

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HARSIMRAN SINGH SETHI, J. (ORAL)

The grievance raised by the petitioner is that by an order dated 29.11.2017 (Annexure P-8), the respondents have withdrawn the benefits of proficiency step up granted to him w.e.f. 26.10.1998 and the petitioner has been declined the benefit of the proficiency step up after 16 years of service as Senior Clerk/Junior Assistant on the ground that he had already been granted promotion as Junior Auditor on 05.04.2003. The consequence of withdrawing the proficiency step up was that the pay of the petitioner was refixed on 05.01.2018 and recovery of ₹1,03,428/- has been made from the pensionary benefits of the petitioner.

Counsel for the petitioner states that the petitioner is only challenging the order of recovery and is not pressing the order dated 29.11.2017 (Annexure P-8) for withdrawal of the benefit of proficiency step up.

As per the averments made in the present writ petition, the petitioner joined the respondents-department as a Clerk on 16.05.1980. His services were regularized on 26.10.1982. Further, he was given a promotion as Senior Clerk on 26.10.1987 and on completion of eight years of service, he was given a higher pay-scale of ₹4020-6200 as a Senior Clerk/Junior Assistant w.e.f. 01.01.1996. Thereafter, the petitioner was promoted as a Junior Auditor on 05.04.2003 and ultimately, he retired on 31.01.2017 as a Senior Auditor.

The grievance of the petitioner is that after the retirement from service, the respondents unilaterally without issuing any show-cause notice, passed an order of withdrawing the benefit of grant of proficiency step up on completion of 16 years service in the cadre of Senior Clerk/Junior Assistant. Further, by the same order dated 29.11.2017 (Annexure P-8), the petitioner was declined the benefit of the proficiency step up on the ground that he got promotion as a Junior Auditor before he completed 16 years of service as a Senior Clerk/Junior Assistant. In compliance of said order dated 29.11.2017 (P-8), the respondents refixed the salary of the petitioner, vide order dated 05.01.2018 (Annexure P-9).

In pursuant to the refixation, an order, having endorsement dated 22.04.2018, was conveyed to the petitioner, by which an excess amount was calculated as ₹1,03,428/-, to be recovered from the petitioner.

Counsel for the petitioner argues that the benefit of the proficiency step up was withdrawn on 29.11.2017 after the petitioner had already retired on 31.01.2017 and further, the said refixation was done unilaterally without there being issuance of any show-cause notice to him before withdrawing of the benefits as done vide order dated 29.11.2017 (Annexure P-8).

Counsel for the petitioner further states that the impugned order is liable to be set aside on the ground that the same has been passed without following the rules of natural justice.

Counsel for the petitioner further states that in any case, no recovery could have been ordered from the petitioner in view of the settled principle of law as settled by the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.**

Counsel for the petitioner further states that once the petitioner has already retired and the order granting the benefit of proficiency step up was passed in the year 1998, the recovery could not have been effected from the petitioner.

Counsel for the respondents states that undue benefit was given to the petitioner by giving a proficiency step up after 16 years w.e.f. 26.10.1998. Respondents argued that once it came to the notice of the department that the said benefit was wrongly extended to the petitioner, the department was well within its right to refix his salary and recover the excess amount as he was not entitled for the said benefit.

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

First of all, it is an admitted case that the petitioner retired on 31.01.2017 and refixation of his pay was done in November, 2017 i.e.

approximately 10 months after the retirement of the petitioner. Further, even the order of recovery was passed in April, 2018, which is approximately one year and three months after the retirement of the petitioner. It is a settled principle of law settled by the Hon'ble Apex Court in **Rafiq Masih's case (supra)** that no recovery can be done from the retired employee. 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:-
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> (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."

The case of the petitioner is squarely covered under Clause 12(ii) & (iii) of the judgment as the petitioner had already retired and his pay was refixed after the retirement, due to which, the recovery has been ordered. The said act is impermissible in law and is liable to be set aside.

Not only this, it is an admitted case that no opportunity of hearing was given to the petitioner before ordering the recovery or effecting the recovery.

It is a settled principle of law that no order causing prejudice to an employee be passed without giving an opportunity of hearing.

In the present case, no show-cause notice whatsoever was given to the petitioner before effecting the recovery or even passing the order of recovery.

In this regard, reliance can be placed upon a judgment of this Court rendered in **Lekhu Singh** Vs. **The Punjab SC Land Development & Finance Corp., Chandigarh**, **1994(1) S.C.T. 748**, wherein it has been held that any order passed by the department without affording an opportunity of hearing, which causes prejudice to an employee, is liable to be set aside. The relevant para 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 view of the above, it is clear that recovery of ₹1,03,428/- made from the petitioner is contrary to the settled principle of law and hence is set aside. The respondents are directed to refund the amount of ₹1,03,428/- to the petitioner as ordered to be recovered vide order dated 02.04.2018 (Annexure P-10).

Counsel for the petitioner states that even the pensionary benefits have not been released to the petitioner by the respondents so far due to the pendency of the present controversy. He further states that the respondents be directed to release all the pensionary benefits immediately.

Counsel for the respondents states that 85% of the leave encashment had already been released to the petitioner. Further, the GPF has also been released to the petitioner in June, 2017 and the case of the petitioner for the grant of pension has already been sent to the Accountant General on 05.10.2018. The relevant paragraph of the written statement is as under: -

> "That the petitioner is also praying for issuance of writ in the nature of Mandamus directing the respondent to release all benefits. It is submitted that the Petitioner was released his 85% of total leave encashment ₹5,26,540 = ₹4,47,559 prior to filing the present petition. The General Provident Fund amounting to ₹1262806/- was released on 21.6.2017. The case for grant of pension to the petitioner has been sent to the office of the Accountant General, Punjab vide letter No.2018/2165 dated 05-10-2018. Furthermore the said recovery was to be made from the retiral benefits not from

the pension.

3. That after the correction in the proficiency step up and refixation of pay, an amount ₹1,03428/- was to be recovered from the petitioner. Now, the Department has granted approval to recover an amount ₹1,03428/- from his balance payable leave encashment amount ₹93811/- and remaining recoverable amount ₹9617/- from gratuity. The Balance leave encashment was withheld in the anticipation of recovery of amount paid to the petitioner due to wrong fixation of pay as correction in the proficiency step up granted to the petitioner case was under consideration."

From the above, it is clear that the benefits for which the petitioner is entitled for either have been released or are in the process of being released.

Hence, the respondents are directed to ensure that all the pensionary benefits, for which the petitioner is entitled for, are released immediately within a period of two years from the date of receipt of certified copy of this order.

Petitioner would be at liberty to approach the respondents for the grant of interest on the delayed release of the payment as well by filing a representation. In case any such representation is filed, respondents will decide the same within a period of two months from the date of the receipt of the representation.

Present writ petition stands disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
February 08, 2019 **JUDGE**
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes