

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16858 of 2017
Date of Decision : 25.01.2019

Shanti Devi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Ashish Grover, Advocate for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

Mr. D.K. Singla, Advocate for respondent No. 2.

Mr. Vikas Chatrath, Advocate for respondent No. 3.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the petitioner has challenged the action of the respondents in making the recovery from her pensionary benefits and that too without following the principles of natural justice or issuing any show cause notice.

As per the pleaded facts, petitioner joined as a JBT Teacher on 13.11.1972. She got promotion as Head Teacher on 20.01.2005 and ultimately, retired as such on 31.03.2006. After the retirement, the pensionary benefits of the petitioner were released keeping in view the last salary drawn by her and pension @ ₹26,143/- per month was fixed. It has been stated in the writ petition that unilaterally, without there being grant of opportunity of hearing, the pension was reduced by the respondents from

₹26,143/-to ₹17,566/-. No order to this effect was ever served upon the petitioner by which, the competent authority decided to reduce the pension of the petitioner. The counsel for the petitioner argues that the petitioner does not know as to on what basis the pension of the petitioner was reduced after a period of 11 years from ₹26,143/- to ₹17,566/-.

Notice of motion was issued on 01.08.2017, upon which the respondents appeared and filed reply to the writ petition. In the reply, it has been stated that after the retirement, the petitioner availed the leave travel concession facility and while reimbursing the benefit of the refund, the petitioner was paid with an excess amount to the tune of ₹30,315/- and the said amount was recovered in three installments @ ₹8,782/- for the month of May, June and July, 2017 and ₹3,969/- for the month of August, 2017. It has been contended that after the said recovery, the petitioner is again being paid the same pension i.e. ₹26,143/- starting from September, 2017 onwards.

In respect of the allegations that no opportunity of hearing was granted to the petitioner before making the said recovery, learned counsel(s) appearing on behalf of respondents No. 2 and 3-Bank fairly concede that after the mistake was noticed by the bank, the same was rectified by them at their own level without issuing any show cause notice or giving any opportunity of hearing to the petitioner.

I have heard learned counsel for the parties and have gone through the record.

It is a settled principle of law that any order which causes prejudice to a person, the rules of nature justice shall be followed. No unilateral decision can be taken even if one party thinks that the mistake is

being rectified. In the present case, the recovery to the tune of ₹30,315/- was being made from the petitioner and that too without even informing her or giving the reasons for the same. Once, it has been admitted that the excess payment was made, the same could not have been recovered without any show cause notice to the petitioner and after considering the reply, if any, clarifying the position.

Furthermore, there is no order even passed by the respondents for effecting the recovery from the petitioner. The respondents on their own decided to rectify their mistake by withdrawing the amount by putting a cut on the pension of the petitioner. This action of the respondents is not supported by any law rather the same is contrary to the settled principle of law. Hon'ble the Supreme Court in the case of ***Chamoli District Co-operative Bank Limited through its Secretary/Mahaprandhak and another Vs. Raghunath Singh Rana and others***, 2016(12) SCC 204, has held that even where there are no specific statutory rules regarding the observance of the rules of natural justice, still, it is incumbent that the concerned person is given due opportunity of hearing before passing any order, which is causing prejudice to him/her. The relevant paragraph of the said judgment is as under :-

*“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in ***Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen*** reported in (1964) 3 SCR 616 has laid down following:-*

“... An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the inquiry officer records his findings with reasons for the same in his report.”

Even Division Bench of this Court while deciding **CWP No. 3756 of 1986**, decided on 22.09.1993, titled as ***Lekhu Singh Vs. The Punjab SC Land Development & Finance Corporation, Chandigarh***, has held that the concept of the opportunity is a basic requirement which has to be extended to every action which has adverse civil or penal consequence. The relevant portion of the said judgment is as under :-

“6. 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.”

In view of the above, the action of the respondents in recovering the amount of ₹30,315/- from the pension of the petitioner is set-aside. The respondents are directed to refund the said amount to the petitioner within a period of two months from the receipt of the copy of this order. Thus, the present writ petition stands allowed.

However, the respondents are given liberty to proceed according to rules and after following the due process of law including the issuance of show cause notice to the petitioner, in case they found that the petitioner has been paid excess amount and the said excess amount can be recovered as per settled principle of law.

January 25, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*