IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-15990-CWP-2018 in/and
CWP-22345-2016
Date of decision: - 18.03.2019**

Goswami

....Petitioner

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Pankaj Sharma, Advocate, for the applicant-petitioner.

Mr. Puneet Bhandari, Advocate, for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

CM-15990-CWP-2018

Present application has been filed on behalf of applicant-petitioner to place on record replication to the written statement filed on behalf of the respondents.

Copy of the application has already been supplied to opposite counsel.

In view of the averments made in the application, the same is allowed. Replication is taken on record, subject to all just exceptions.

CM stands allowed.

CWP-22345-2016

In the present writ petition, the grievance of the petitioner is that vide order dated 12.04.2016 (Annexure P-2), while issuing the gratuity pay order, the recovery of ₹84,130/- has been done from his pensionary benefits.

It is the contention of the petitioner that the same is violative of the judgment of the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195,** as the same has been done after the retirement and in respect of the benefit which was granted to the petitioner about more than 25 years prior to his retirement.

The facts as mentioned in the present writ petition are that petitioner was initially appointed as Team-mate with the Municipal Corporation, Amritsar on 31.07.1980 and thereafter, he was promoted as Assistant Lineman on 10.01.1996 and further promoted as a Lineman on 02.09.2009. While working as such, the petitioner retired on 31.08.2015. While calculating the pensionary benefits of the petitioner, the respondents passed an order on 12.04.2016 for the payment of the gratuity that a sum of ₹84,130/- has been recovered from the petitioner.

As per the averments made in the writ petition, nothing was mentioned as to on what account the said recovery has been done and furthermore, the same has been done without holding any enquiry or giving any show cause notice or giving any opportunity of hearing to the petitioner to defend himself against the said recovery, which was being done from his retiral benefits.

Upon notice of motion, the respondents have filed the reply.

In the reply, the respondents have mentioned that recovery of ₹84,130/- has been done on the ground that when the petitioner was promoted to the post of Assistant Lineman on 10.01.1996 and further promoted as a Lineman on 02.09.2009, he was granted the benefit of increment, which he would not have got as he was granted the benefit of eight years proficiency step up on 31.07.1988, which was to be adjusted while effecting the promotion of the petitioner to the post of Assistant Lineman and Lineman and therefore, instead of getting two increments, the petitioner was only entitled for one increment at the time of promotion and hence, one increment which was wrongly granted to the petitioner was withdrawn while computing his pensionary benefits and the recovery on account of the said withdrawal of the increment amounting to ₹84,130/- has been done from the DCRG of the petitioner. In respect of the averments made by the petitioner in paragraph 9 that the said recovery has been done without giving any opportunity of hearing to the petitioner, has been denied without giving any facts as to in what manner, the personal hearing or a show-cause notice was given.

During the course of hearing today, counsel for the respondents has not been able to place on record any document showing that any opportunity of hearing was given to the petitioner before effecting the recovery from the petitioner.

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

It is a matter of fact that petitioner stood retired on

31.08.2015. The recovery has been done from the petitioner, vide gratuity pay order, which was issued on 12.04.2016. Further, there is nothing on record to show that any opportunity of hearing was given to him before the recovery was effected from the petitioner. The order dated 07.10.2015 (Annexure R-1/2) has been written by the Chief Accounts Officer, Patiala to the Accounts Officer, Amritsar whereby straightway the direction has been given that the proficiency step up given to the petitioner should be withdrawn and recovery should be made. No opportunity has been given before passing the said order by the respondents to the petitioner.

It is a settled principle of law that any order, which is causing prejudice to an employee, can only be passed after following due procedure of law i.e. observing the rules of natural justice. Once, the rules of natural justice have been violated, any such order passed is not sustainable in the eyes of law.

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."

Even otherwise, the Hon'ble Apex Court in **Rafiq Masih's case (supra)** has held 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:-

(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 record would show that the refixation of the salary on withdrawal of proficiency step up and consequential recovery was passed without following the due procedure and hence, cannot be sustained.

Counsel for the respondents states that at the time of retirement, a letter was written by the department to the petitioner that in case any recovery is to be done from the petitioner, the same will be done without there being any effect of superannuation of the petitioner from service.

The said order will not give any right to the respondents in respect of an order or the benefit, which was given to the petitioner in the year 1996 while giving him promotion. Further, the said order passed by the respondents cannot be treated as an undertaking given by the petitioner at the time of his retirement. Therefore, the said order passed by the respondents on 18.10.2015 at the time of retirement of the petitioner, will not give any power/authority to recover the amount from the retiral benefits of the petitioner and that too without affording any opportunity of hearing.

In view of the above, the action of the respondents for recovering an amount of Rs.84,130/- from the retiral benefits of the petitioner is contrary to the settled principle of law and hence is set aside. The respondents are directed to refund the amount so deducted from the petitioner within a period of two months from the date of receipt of certified copy of this order.

Present writ petition stands disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

March 18, 2019
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Whether reasoned/speaking?	Yes
Whether reportable?	Yes