

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

(229)

CWP-23434-2015

Date of Decision: February 13, 2019

Asha Rani

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Namit Kumar, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the challenge is to the order dated 31.08.2015 (Annexure P-17) by which, the pay of the petitioner has been refixed with effect from 01.07.2008 and the amount of the excess payment made, is sought to be recovered.

The facts as stated in the writ petition are that the petitioner was appointed as a Clerk on 15.04.1974, thereafter, she was promoted as Kanungo (Sales) on 01.12.1994. Thereafter, she was further promoted as Naib Tehsildar (Sales) vide order dated 22.10.2008 and thereafter she was promoted as Tehsildar vide order dated 14.06.2013 and from which post, the petitioner retired on 30.11.2014.

The grievance of the petitioner is that after the retirement of the petitioner, the respondents unilaterally refixed the pay of the petitioner w.e.f. 01.07.2008 and reduced her basic pay. Neither an opportunity of hearing was given to her prior to the passing of the said order; nor any show cause notice was issued to the petitioner before refixing the salary of the petitioner and directing the recovery of the excess amount paid.

In paragraph 9, the petitioner has made the following averments:-

“ That instead of granting the benefit of one annual increment which was due to the petitioner w.e.f. 1.7.2013, surprisingly vide order dated 31.8.2015, the Basic Pay of the petitioner has been altered to her disadvantage w.e.f. 23.10.2008 by reducing the same from Rs.14550 to 14030 (on promotion as Naib Tehsildar (Sales) and the benefit of promotional increment granted on her promotion as Naib Tehsildar (Sales) has been withdrawn after seven years and that too after retirement and thereafter the same has been reduced from Rs.18120/- to Rs.16860/- on promotion as Tehsildar (Sales) without issuing any Show Cause Notice or granting an opportunity of personal hearing to the petitioner and it has further been ordered that the payment in excess, if any, be recovered from the petitioner. A copy of the order dated 31.8.2015 is annexed as Annexure P-17 with this writ petition. In the above-said order, a reference has been made to FD order dated 9.4.2010 (Annexure P-18) which is, in fact, not applicable to the case of the petitioner as the said letter of the FD is dated 9.4.2010 and has been issued after the pay-scales were revised and whereas the petitioner was granted the benefit of Ist ACP in the old pay-scale of Rs.5500-9000 as per the then prevalent rules/instructions and cannot be applied retrospectively. Further the grant of revised pay-scale of Rs.9300-34800 + Grade Pay of Rs.3300 is merely a consequential fixation in the revised pay-scale. Further, the said order is only applicable where the grade pay of promotional post and ACP pay structure in which the government servant is drawing his pay prior to promotion are identical.”

While issuing notice of motion, this Court, vide order dated 03.11.2015, stayed the recovery from the petitioner. On 03.11.2015, the following order was passed:-

“States that by virtue of the impugned order recovery is sought to be effected from the petitioner after refixation of pay without issuance of any notice.

Notice of motion for 7.4.2016.

In the meantime, recovery from the petitioner shall remain stayed.”

In the reply, the respondents have stated that the petitioner was not entitled for the grant of ACP, which was allowed to her and therefore the pay of the petitioner was refixed. In reply to para 9, where clear averment has been made by the petitioner that no opportunity of hearing was given before passing the impugned order, the same has not been denied. Reply to para 9 of the petition is as under:-

“That in reply to Para No.9 of the writ petition, it is submitted that the pay of the petitioner as Tehsildar (Sales) was fixed on the basis of pay fixed to the post of Naib Tehsildar (Sales) at Rs.14,550/- plus Rs.3,600/- Grade Pay with effect from 23.10.2008 after granted one increment. Whereas, the petitioner was not entitled to get the benefit of increment as per provisions of the Revised Pay Rules, 2008 and instructions issued by the Finance Department dated 9.4.2010 and further clarification dated 20-1-2011 whereas the petitioner was entitled to get only the difference of the Grade Pay from Rs.3,300/- to Rs.3,600/-. Therefore, the pay of the petitioner to the post of Tehsildar (Sales) was calculated in the normal way at Rs.17,470/- Plus Rs.4,200/- Grade Pay in place on Rs.16,860/- Plus Rs.4,200/- Grade Pay with next date of increment 1-7-2014 vide order dated 7.3.2014 (Annexure P/13) with

effect from 19.6.2013. Hence, the pay of the petitioner has rightly been fixed as Tehsildar (Sales) after rectifying the discrepancy of the pay of the previous orders vide order dated 31-8-2015 (Annexure P/17) in accordance with the Rule 13 (2) of the Revised Pay Rules, Rule 7 (4) of the 2008, A.C.P. Rules, 2008 and instructions dated 9.4.2010, 20.1.2011 and 17.1.2001.”

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

It is a settled principle of law that no order which causes adverse civil or penal consequences or causes prejudice to an employee, can be passed without affording any opportunity of hearing. Opportunity of hearing is must as per the settled principle of law. A Division Bench of this Court in **Lekhu Singh Vs. The Punjab SC Land Development and Finance Corp., Chandigarh, 1994 (1) S.C.T. 748** has already held that whenever any order is to be passed which visits an employee with the penal consequence, opportunity of hearing is must. The relevant portion of the judgment 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 or 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.

Once, the respondents have admitted that no opportunity of hearing was granted to the petitioner, the impugned order cannot be sustained in the eyes of law and is liable to be set aside.

In view of the above, the impugned order dated 31.08.2015 (Annexure P-17) is set aside.

However, the respondents will be at liberty to pass a fresh order after observing the due process of law including the rules of natural justice. It will be appropriate that the petitioner is also granted a personal hearing before passing of any order.

In respect of the other grievances, which have been raised by the petitioner for the grant of increment/LTC on promotion, by giving option to an employee, the petitioner will be free to file an appropriate representation with the respondents, which shall be considered by the respondents in accordance with law and the appropriate order in respect of the said claim will also be passed by the respondents.

The present writ petition stands allowed.

It is made clear that this Court expresses no opinion about the entitlement of the petitioner or otherwise of the relief, which was withdrawn by the respondents while fixing the salary of the petitioner, at this stage.

February 13, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No