

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

**CWP- 23877 of 2015
Date of decision: 29.10.2019**

Prem Sagar and others

.... Petitioner

versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. O.P. Gabba, Advocate
for the petitioners.

Ms. Sunint Kaur, AAG, Punjab.

Mr. Vikas Chatrath, Advocate with
Mr. Rajesh Kumar, Advocate
for respondent No.4.

HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the grievance which is being raised by the petitioners is that the recovery is being done from the petitioners, keeping in view order dated 01.06.2015 (Annexure P/6) and the excess amount of old age allowance, which has been paid to the petitioners without giving opportunity of hearing and without issuing any show cause notice to them, which is not at all permitted.

As per the averments made in the writ petition, the petitioners are retired employees, who retired from the different departments of State of Punjab and are being paid pension by the State Bank of Patiala (now State

Bank of India) every month. Respondent/State of Punjab passed an order dated 01.06.2015 (Annexure P/6) that the amount, which has been paid to the employees as an old age allowance, be recovered as the same was not permissible. In pursuance to the said order, recoveries were initiated by the respondents from the retired employees including the petitioners, which action is under challenge in the present writ petition.

Learned counsel for the petitioners argues that as stated in para-7 of the writ petition, the recoveries which are being done from the petitioners, are being done without affording any opportunity of hearing to the petitioners. Counsel for the petitioners further argues that neither any show cause notice nor any opportunity to represent their case against the said recovery has been given to the petitioners.

Upon notice of motion, the respondents have filed reply. In the reply, which has been filed on behalf of respondents No.1 to 3 in response to paragraph -7 of the writ petition, following have been submitted:-

“ (i & ii) That the contents of the sub Para are related with Chief Manager, State Bank of Patiala, CPPC, Urban Estate, Patiala. The contents of Para No.8 of preliminary submissions are reiterated.”

Counsel for respondents No.1 to 3 argues that bank had to issue show cause notice before effecting recoveries.

Reply has been filed on behalf of the Bank and in reply to para-7 of the writ petition, the following has been submitted:-

“That in reply to contents of para No.7 of Civil writ petition, it is submitted that the contents of the same are wrong and denied, the sub para wise reply is as under:-

(i) That in reply to the contents of sub para (i), it is stated that the recovery has been made in view of the notification dated 17.08.2009 (P-3) which is self explicit in respect of mode of payment of the allowances.

- (ii) That in reply to the contents of sub para (ii), it is stated that the recovery has been made in view of the notification dated 17.08.2009 (P-3) which is self explicit in respect of mode of payment of the allowances.
- (iii) That in reply to the contents of sub para (iii), it is stated that the contents are wrong and denied being incorrect, the notification dated 17.08.2009 (p-3) is self explicit.
- (iv) That in reply to the contents of sub para are wrong and denied being incorrect. The submissions made above in the preliminary objections be treated as part and parcel to the corresponding para. The judgement of Rafiq Masih and Annexure P-7 would not apply to the facts and circumstances of the present case, being distinct and distinguishable. The issuance of notice is matter of record.

Bare perusal of the reply filed on behalf of the respondent No.4/Bank would make it clear that no show cause notice whatsoever has been issued to the petitioners before effecting recovery.

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

The only question which arises for consideration of this Court is as to whether any recovery can be done from an employee without giving any opportunity of hearing. It is the settled principle of law settled by Hon'ble Supreme Court of India in **Chamoli District Cooperative Bank Limited through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others, 2016(3) S.C.T. 89: 2016(12) SCC 204** that no order which causes prejudice to the person can be passed without following rules of natural justice. Relevant para 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.”

A person has to be made known of the reasons/grounds for effecting recovery so as to give proper objections, if any, in respect of the proposed action. It is only after considering the objections, if any, raised by the concerned person to the recovery, decision can be taken by the competent authority as to whether the recovery can be effected or not. In the present case, respondents have passed order of recovery unilaterally without even issuing any show cause notice to the petitioners bringing in their notice the grounds/reasons on which recovery is being effected.

Keeping in view the above, as rules of natural justice have been violated, no recovery can be effected from the petitioners and action of the respondents in effecting recovery from the petitioners is accordingly set aside.

However, it will be open to the respondents to follow rules of natural justice, in case the recovery is permissible under rule or law from a retired employee. It will be appreciated, if guidelines, which have been issued by the Hon'ble Supreme Court of India in **State of Punjab & Others vs Rafiq Masih (White Washer) etc (2014) 8 SCC 883** for effecting recovery are kept in mind, in case respondents decides that amount of old age allowance needs to be recovered from the petitioners.

Keeping in view the above, the writ petition is allowed.

Respondents are directed to refund the amount whatsoever has been recovered from the petitioners within a period of two months from the date of receipt of certified copy of this

29.10.2019
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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