

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

(217)

CWP-2359-2016

Date of Decision: September 06, 2019

Pardeep Sharma

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Charanji Lal, Advocate, for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

Mr. Jivesh Malik, Advocate, for

Mr. Hitesh Malik, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI, J.(ORAL)

Learned counsel for the petitioner submits that the impugned order of recovery dated 11.06.2015 (Annexure P-3) has been passed against the petitioner for occupying a Government accommodation for which he did not pay the rent. The grievance of the petitioner is that the petitioner was never allotted the said accommodation and therefore, the question of payment of the rent qua the said accommodation does not arise and further, before passing the order of recovery dated 11.06.2015 (Annexure P-3), the petitioner was not given any opportunity of hearing or show cause notice and the recovery has been straightaway imposed and recovered also from the petitioner.

Upon notice of motion, a short reply has been filed by respondent No.3. In the reply, respondent No.3 has admitted that no show cause notice was issued to the petitioner before making the entry relating to Rs.1,01,490/- which is sought to be recovered from the petitioner on

account of rent for using the Government accommodation. The relevant paragraph of the reply is as under:-

“ 1. That the answering respondent is filing short reply by way of affidavit, however, reserve its right to file detailed reply, if needs arise in future or directed by this Hon'ble High Court.

2. That this Hon'ble High Court vide order dated 06.03.2017 directed the answering respondent to file short affidavit to the extent that before making any necessary entry relating to recovery of Rs.1,01,490/- whether the petitioner has been given notice for such action or not?. The order dated 06.03.2017 is reproduced as under:-

" CWP No.2359 of 2016

Pardeep Sharma vs. State of Haryana and others

Present: Mr. Ashwani Kumar Bura, Advocate, for the petitioner.

Respondent No.3 is directed to file short affidavit to the extent that before making necessary entry relating to recovery of Rs.1,01,490/- whether the petitioner has been given notice for such action or not.

List this matter on 15.03.2017.

March 06,2017

(P.B Bajanthri)

Judge”

From perusal of the official record reveals that, it is stated that no such show cause notice was given to the petitioner before making entry relating to Rs.1,01,490/-.”

During the course of hearing today, learned counsel appearing on behalf of respondent No.3 admitted that no opportunity of hearing was afforded to the petitioner before passing order dated 11.06.2015 (Annexure P-3), holding the petitioner liable to pay a sum of Rs.1,01,490/-.

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

The impugned order dated 11.06.2015 (Annexure P-3) has admittedly been passed without giving any opportunity of hearing to the petitioner. No show cause notice whatsoever was issued to the petitioner to explain his position whether, the petitioner had occupied the Government accommodation or not before imposing the rent upon the petitioner. It is a settled principle of law settled by the Division Bench of this Court in **Lekhu Singh Vs. The Punjab SC Land Development and Finance Corporation, Chandigarh, 1994(1) SCT 748** that no order which causes penal consequences to an employee, can be passed without affording any opportunity of hearing. The relevant paragraph of the Division Bench 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, 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.”

Once it is admitted that no show cause notice was issued to the petitioner before effecting recovery of Rs.1,01,490/-, order dated 11.06.2015 (Annexure P-3) cannot sustain and is consequently set aside. However, the respondents will be at liberty to pass a fresh order in

accordance with law after giving due opportunity to the petitioner, in case they feel that the petitioner was liable for the payment of Rs.1,01,490/- in any manner.

The writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

September 06, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes