227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 25126 of 2015
Date of decision: 05.12.2019

KRISHNA KUMARI ...**PETITIONER**

VERSUS

STATE OF HARYANA AND ORS. .
...**RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Chandra Shekhar, Advocate for
Mr. Umesh Narang, Advocate
for the petitioner.

Ms. Safia Gupta, AAG, Haryana.
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HARSIMRAN SINGH SETHI,J. (ORAL)

In the present writ petition, the challenge is to the order dated 10.10.2013 (Annexure P-7) by which the pay of the petitioner has been refixed by the respondents and that too without giving any opportunity of hearing as well as to the order dated 13.02.2015 (Annexure P-9), vide which the recovery of the excess amount has been ordered from the petitioner.

The facts as stated in the writ petition are that the petitioner was appointed as Hindi Teacher initially, on adhoc basis on 24.04.1979 and thereafter, her services were regularized on 16.09.1992. The pay scale of the employees of Government of Haryana was revised by the State of Haryana vide Haryana Civil Services (Revised Pay) Rules, 1998 and Haryana Civil Services (Assured Carrier Progression) Rules, 1998. This pay revision was given effect from 01.01.1996.

Keeping in view the provisions of rule, petitioner was given benefit of 2nd ACP w.e.f 01.10.2002 and was thereafter also promoted as a Hindi Lecturer w.e.f. 19.02.2004. The pay scale allowed while granting 2nd ACP i.e. Rs.6500-10500, was the same scale as the petitioner was entitled for on promotion as a Hindi Lecturer while availing the benefit of promotion. Benefit of increment was granted to the petitioner in 2004, while granting her the promotion. Petitioner kept on working as Lecturer till she retired on attaining the age of superannuation on 30.06.2012. While calculating the pensionary benefits of the petitioner, respondents realized that a benefit of increment was wrongly given to the petitioner while giving the benefit of promotion to the petitioner to the post of Hindi Lecturer w.e.f. 19.02.2004. Without giving any opportunity of hearing to the petitioner, respondents refixed the salary of the petitioner vide order dated 10.10.2013 by withdrawing the increment granted to the petitioner in 2004. After refixing the salary of the petitioner, respondents also decided to recover the excess amount paid to the petitioner, assesed as Rs. 57,634/-. The said amount was recovered from the pensionary benefits of the petitioner. The challenge in the present writ petition is to the refixation of the pay of the petitioner vide order dated 10.10.2013 (Annexure P-7) and also to the recovery of the excess amount, vide order dated 13.02.2015 (Annexure P-9).

Upon notice of motion, respondents have filed the reply and in the reply, respondents have admitted that without giving any opportunity of hearing, pay of the petitioner has been refixed by withdrawing the benefits of an increment which was extended to the petitioner w.e.f. 19.02.2004. Respondents have further admitted in paragraph 6 of the reply that the recovery amounting to Rs. 57,634/- has been done from the Dearness Allowance payable to the petitioner. The respondents have defended the refixation as well as recovery on the ground that the benefit, which was wrongly granted to the petitioner, has been rightly withdrawn and the excess amount, which is a public money, has been adjusted from the benefits of the petitioner.

I have heard counsel for the parties and perused the file carefully with their able assistance. The question which has been raised in present writ petition is as to whether the pay of an employee can be refixed by the department after his/her retirement and that too without giving any opportunity of hearing.

It is a settled principle of law that no order which causes prejudice to an employee can be passed without giving any opportunity of hearing. Any order causing Civil or Penal consequences, can only be passed after affording due opportunity of hearing and after following the principles of natural justice. Employee has to be given due opportunity to object to the proposed action and only after considering those objections, any order can be passed by the authorities. A Division Bench of this Court in **Lekhu Singh Versus The Punjab SC Land Development and Finance Corporation, Chandigarh 1994 (1) SCT 748** has held that any order which has been passed by the authorities without affording opportunity of hearing is to be treated nullity. The relevant paragraph 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 and 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 the present case, the impugned order dated 10.10.2013 (Annexure P-7) refixing the pay of the petitioner after her retirement has been passed without affording any opportunity of hearing. The rules of natural justice have been violated by the respondents while passing the said order. The said order is contrary to the settled principle of law as settled in **Lekhu Singh's (Supra) case** and therefore, cannot be sustained in the eyes of law.

Even otherwise, the recovery cannot be effected after the retirement keeping in view the settled principle of law, settled by the Hon'ble Supreme Court of India in **State of Punjab Versus Rafiq Masih (White washer) and others.** The Hon'ble Supreme Court of India has laid down guidelines that under what circumstances, the recovery cannot be effected. The relevant paragraph 12 of **Rafiq Masih (supra) case** is as under:-

> 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 above would show that no recovery can be done from an employee who is working in Class-C and Class-D. Further, the recovery cannot be effected from an employee who has already retired or is nearing retirement. Recovery is also impermissible in case the order, which is sought to be withdrawn, is more than five years old on the date of its withdrawal. In the present case, the recovery has been done from the petitioner after her retirement and that too, from the retiral benefits. Further, the order which was passed in the year 2004, has been withdrawn by the respondents in the year 2012, therefore, the recovery is not permissible upon this account as well.

Learned State counsel raises an argument that **Rafiq Masih (Supra)** case will not be applicable in the present case as the recovery was effected in the year 2013, i.e. much prior to the date the judgment was rendered by the Hon'ble Supreme Court of India. This question has already been considered by a Division Bench of this Court in **LPA No. 2448 of 2016 titled as State of Punjab and others Versus Amrik Singh and others** as to whether the judgment in **Rafiq Masih (supra) case** will be applicable upon the cases pending and will have the retrospective effect or not. Division Bench of this Court in LPA No. 2448 of 2016 has held that the judgment in **Rafiq Masih (supra) case** will have retrospective effect as the same has not been prohibited by the Hon'ble Supreme Court of India. The relevant portion of the judgment passed by the Division Bench in this regard is as under:-

> The contention that the principles laid down in Rafiq Masih will apply ‘prospectively’ cannot be accepted as no such limitation has been imposed by the Hon’ble Supreme Court. Taking into consideration the current status of the respondents, namely, that many of

> them have retired or are near retirement and the fact that they are holding Group 'C' & 'D' posts, we are satisfied that no interference in the discretion exercised by learned Single Judge is called for.

Therefore, the argument raised on behalf of the respondents that there cannot be any retrospective applicablity of **Rafiq Masih's case (supra),** cannot be sustained and is, therefore, rejected.

In view of the above, as the impugned order dated 10.10.2013 (Annexure P-7) regarding refixing the salary of the petitioner has been passed without observing the rules of natural justice and that too after retirement, the same is set aside. Even the recovery of an excess amount which has been recovered upon refixation of the pay of the petitioner, is also against the settled principle of law. The said action of the respondents is also set aside. The respondents are directed to grant the pensionary benefits of the pay which she was drawing at the time of her retirement, ignoring the order of refixation dated 10.10.2013 and whatever the benefit, the petitioner is entitled for in respect of the grant of the pensionary benefits, the same shall be accorded to the petitioner on the last drawn pay. The arrear for which the petitioner is found entitled for under this order, shall also be released alongwith the amount which has been recovered from the petitioner upon the refixation of her salary. Let this order be complied with within a period of three months of the receipt of the certified copy of this order.

The present writ petition is allowed in above terms.

05.12.2019 **(HARSIMRAN SINGH SETHI)**
renubala **JUDGE**

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