

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

CWP-27067 of 2015

Date of decision: 17.07.2019

Bahadur Singh

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Sukhmani Patwalia, Advocate for
Mr. Vikas Singh, Advocate for the petitioner.

Mr. Vikas Mohan Gupta, Addl. A.G. Punjab.

HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the grievance which is being raised by the petitioner is that without giving any show cause notice or opportunity of hearing, a sum of Rs,3,06,622/- has been recovered from the pensionary benefits of the petitioner. The facts as mentioned in the writ petition are that the petitioner was appointed as Conductor on 06.09.1982 and his services were terminated on 08.11.1982. He filed appeal against the said order of termination, which was also dismissed on 4.10.1983. Thereafter, the petitioner challenged the order of termination of his service by filing a civil suit, which was decreed in the year 1985. The said decree was implemented by the respondents and the petitioner was taken back in service and subsequently his services were regularized on 1.1.1986. The decree passed in the year 1985 was challenged

by the respondents by filing an appeal. The said appeal was allowed and the decree passed in favour of the petitioner was set aside. Against the said order of the first Appellate Court, the petitioner preferred RSA No.2037 of 1987. The order passed by the first Appellate Court was stayed and, therefore, the petitioner continued working uninterruptedly.

Counsel for the petitioner argues that the said appeal came up for hearing before this Court on 19.1.2012 and was allowed partially by giving a direction that the petitioner will retire from service w.e.f. 31.3.2012. Relevant portion of the said order is as under:-

“An important point brought to my notice by learned counsel for the appellant, and which is being confirmed by the learned Deputy Advocate General is that after the suit was decreed in the year 1985 the appellant joined the service and when the present appeal was admitted interim order was granted. Resultantly the appellant has continued to serve till today and his services were regularized on 01.01.1986. In the circumstances, learned counsel for the appellant has argued that the appellant cannot be now flung out into the cold after he has served for almost 30 years. Learned Deputy Advocate General has not been able to counter this equitable argument.

In the considered opinion of this Court, keeping in mind the entire factual matrix, it would be in the interest of justice if the appeal is disposed of with the direction to the respondent to treat him as having retired w.e.f. 31.01.2012.

Ordered accordingly.”

Counsel for the petitioner argues that though, the petitioner was to superannuate w.e.f. 31.1.2012, as per the order passed by this Court but the petitioner was not relieved from service and kept on discharging his duties till 31.1.2013. After 31.1.2013, the petitioner was made to retire from service.

Counsel for the petitioner argues that after his retirement, while

issuing pension payment order, respondents have deducted an amount of Rs.3,06,622/- from the gratuity of the petitioner vide order dated 20.3.2014 (Annexure P/3). The said order is under challenge in the present writ petition.

Counsel for the petitioner argues that once the petitioner was not relieved from service by the respondents and allowed to continue, the recovery which is being done from the petitioner on the premise that w.e.f. 1.2.2012 onwards, the petitioner is only to be paid pension and the salary, which was more than pension, has to be deducted, is incorrect and cannot be done for the reasons that once the petitioner has discharged his duties, he was entitled for the salary for the said period.

Upon notice of motion, in the reply which has been filed by the respondents, it has been stated that copy of order dated 19.1.2012 was received by respondents/department on 21.1.2013 and keeping in view the legal opinion given, the petitioner was retired actually on 31.1.2013 w.e.f. 31.1.2012 and keeping in view the extra wages given to the petitioner for the period from 1.2.2012 onwards till 31.1.2013, the same has been recovered.

Counsel for the respondents has very fairly admits that no show cause notice whatsoever was given to the petitioner before effecting recovery.

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

The contention which has been raised on behalf of the petitioner is that petitioner was not relieved from service by the respondents and allowed to continue, therefore, once the petitioner actually discharged his duties, he was entitled for salary of said period and the same cannot be deducted at later stage.

Counsel for the petitioner contends that keeping in view order passed by this Court on 19.1.2012, respondents though can retire the

petitioner w.e.f. 31.1.2012 but amount of salary for the period for which the petitioner discharged his duties cannot be withdrawn.

Counsel for the respondents states that the petitioner never informed the respondents about order dated 19.1.2012 and continued working and it is only when respondents have received order from the office of Advocate General, action was taken and, therefore, the recovery which is being done from the petitioner is valid and legal .

The factum as to whether the petitioner was not relieved by the respondents or the petitioner did not inform the respondents about passing of order can only be decided/verified by the respondents after giving opportunity of hearing to the petitioner in this regard. The same could have been done by the respondents by issuing show cause notice and, thereafter, taking an appropriate decision. There is no finding which has been recorded by the respondents that the petitioner was himself responsible for continuing with job after 31.1.2012 and, therefore, he is not entitled for the benefit of salary for the said period. In the absence of any such findings, no recovery could have been ordered from the petitioner. Furthermore, it is settled principle of law that no order of penal consequences, against an employee can be passed without affording opportunity of hearing. In the present case, the recovery has been done without affording any opportunity which cannot be done in view of the law laid down in **Lekhu Singh vs. The Punjab SC Land Development & Finance Corp. Chandigarh 1994 (1) SCT 748.**

Relevant para 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.

Keeping in view the above, the recovery which has been done from the petitioner is held to be illegal but the respondents are given an opportunity to pass fresh order in accordance with law after following due process.

The present writ petition is allowed in those terms.

(HARSIMRAN SINGH SETHI)

17.07.2019

JUDGE

- aarti* 1. Whether speaking/non-speaking?
2. Whether reportable?

Yes/No
Yes/No