

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

(216)

CWP-3314-2016

Date of Decision: May 14, 2019

Joginder Singh

.. Petitioner

Versus

State of Punjab & others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Arora, Advocate, for the petitioner.

Ms. Deepali Puri Sandhu, Addl. A.G., Punjab.

Ms. Meena Bansal, Advocate, for respondent No.4.

Mr. Vijay Kumar Kaushal, Advocate, for respondents No. 5&6.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance of the petitioner is against the order dated 16.06.2014 (Annexure P-3) which has been passed by respondent No.5 by which the benefit of ACP which was granted to the petitioner in the year 1988, was withdrawn.

As per the averments made in the writ petition, petitioner initially joined Indian Army during the period of emergency on 09.05.1964 and he continued working there till 18.09.1968. After being released from Army, petitioner was initially recruited in the Department of Public Health, Government of Punjab on 10.04.1972 on work charge basis. Petitioner continued working there till the year 1978 and thereafter the services of the petitioner was transferred to the Punjab State Water Supply and Sewerage Board. In the year 1992, the maintenance of the Sewerage and Water Supply was transferred to the respective Municipal Council/Corporations of the

State of Punjab and as the work had transferred to Municipal Council, petitioner was also absorbed permanently in the Municipal Council, Sunam, District Sangrur in the year 1992.

While working in Punjab Water Supply and Sewerage Board, in the year 1988, petitioner was given the benefit of proficiency step-up after a period of service of 8 years. Petitioner continued to get the said benefit till his retirement i.e. 31.01.2004.

The grievance of the petitioner is that respondent No.5 i.e. Punjab Water Supply and Sewerage Board unilaterally, without giving any opportunity of hearing, passed an order on 16.06.2014 i.e. after a period of more than 10 years of the retirement of the petitioner, withdrawing the benefit of proficiency step-up given to the petitioner in the year 1988. On the basis of said order, Municipal Council, Sunam also passed an order reducing the salary of the petitioner and thereby the consequent pension, though no recovery has been effected from the petitioner.

This order dated 16.06.2014 (Annexure P-3) is under challenge in the present writ petition.

In the reply filed by respondents No. 5 and 6, who has passed the impugned order Annexure P-3, respondent No.5 has stated that keeping in view the instructions which have been issued by the Government of Punjab dated 07.05.1990, the petitioner was not entitled for the grant of proficiency step-up by taking into consideration the work charge service which the petitioner had rendered and therefore, the same was rightly withdrawn from the petitioner and conveyed to the Municipal Council, Sunam for their information.

Learned counsel for respondents No.5 & 6 further states that it was for the Municipal Council, Sunam to act upon the said letter or not, as the petitioner was their employee.

Learned counsel for respondent No.4 states that once the benefit of proficiency step-up was withdrawn by respondent No.5, it was incumbent upon the Municipal Council, Sunam to implement the said order as the salary of the petitioner was fixed by the Municipal Council, Sunam after taking into consideration the salary, which the petitioner was enjoying at the time when he was absorbed in Municipal Council, Sunam from the office of Punjab Water Supply and Sewerage Board and therefore, keeping in view the order dated 16.06.2014 Annexure P-3 passed by respondent No.5, the pay of the petitioner was refixed and the consequent pension as well.

The grievance which is being raised by the petitioner in the present writ petition is that the order Annexure P-3 is liable to be set aside on two grounds: (i) on the date when the order Annexure P-3 was passed, the petitioner had already retired and further, the petitioner was not the employee of respondent No.5 even at the time of retirement and therefore, there was no jurisdiction with the respondent No.5 to pass any order in respect of an employee, who was no longer serving with them and had already been absorbed in another institution, and (ii) grievance of the petitioner is that respondent No.5 did not follow the procedure as envisaged under law for withdrawing the benefit i.e. grant of an opportunity of hearing before any order which causes prejudice to an employee, is passed.

Learned counsel for respondent No.5 is unable to rebut both the arguments which have been raised by counsel for the petitioner.

Learned counsel for respondent No.5 has admitted that since 1992, the petitioner was not the employee of respondent No.5 and was an employee of the Municipal Council, Sunam i.e. respondent No.4 and continued to be remained with respondent No.4 till his retirement.

Secondly, it is also admitted by counsel for respondent No.5 that no opportunity of hearing was granted before withdrawing the benefit which was extended to the petitioner in the year 1988.

Keeping in view the above admission on part of respondent No.5, impugned order dated 16.06.2014 (Annexure P-3) cannot sustain in the eyes of law.

Once on the date when the order is passed, the petitioner was not the employee of respondent No.5, which department passed the impugned order and petitioner had already been absorbed in another department and had even retired from the said department. No provision of law has been shown by counsel for respondent No.5 as to how the respondent No.5 was well within the jurisdiction to take action or pass an order in respect of a person who was no longer their employee and had also retired 10 years ago and that too from another department. In the absence of any rules and regulations, authorizing respondent No.5 to take an action under such a situation, no order causing prejudice to the petitioner could have been passed by respondent No.5 after the retirement of the petitioner and that too from another department.

Further, it is also a settled principle of law that no order which causes prejudice to an employee, can be passed without granting an opportunity of hearing. In the present case, rules of natural justice were

violated by the respondents by unilaterally passing an order withdrawing the benefit, which was extended to the petitioner far back in the year 1988. Therefore, the order passed is contrary to the principle of natural justice and cannot be sustained in view of judgment passed by 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.*

In view of the above, the present writ petition is allowed and the impugned order 16.06.2014 (Annexure P-3) is set aside. The consequential relief shall be granted by the Municipal Council, Sunam in view of the fact that Annexure P-3 no longer exists.

The writ petition is allowed in above terms.

In case any benefit has been withdrawn by respondent No.4 in pursuance to Annexure P-3, the same shall be released to the petitioner within a period of three months from the receipt of copy of this order.

May 14, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: Yes