

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

(248)

CWP-5329-2016

Date of Decision: March 05, 2019

B K Khosla

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Naresh Jain, Advocate, for the petitioner.

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

Mr. Vikas Chatrath, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the challenge being made by the petitioner is to the action of the respondents in recovering the amount from the petitioner.

As per the facts mentioned in the writ petition, the petitioner retired as Senior Veterinary Officer after rendering approximately 34 years of service with the respondents. The petitioner was withdrawing his pension on regular basis. In paragraph 4 of the writ petition, the petitioner has stated that in the year 2015, when the petitioner went to draw his pension, instead of Rs.56,838/-, the account of the petitioner was credited with Rs.53,788/-. On being asked, the petitioner was informed that there were some recovery which was to be made from the petitioner to adjust the excess amount granted. Petitioner states that no order was passed and no opportunity of hearing was given before effecting the recovery at the rate of Rs.3051/- per month. The present writ petition has been filed claiming the

refund of the said recovered amount from the account of the petitioner.

Upon notice of motion, State of Punjab has filed the reply which is as under:-

“ 1. That this petition has been filed by the petitioner for quashing the action of the respondent by which the recovery proceedings has been initiated against the petitioner by the respondent No.3.

2. That in reply to this para it is submitted that the petitioner has retired from the Department of Animal Husbandary on 30.06.1998 and the petitioner was withdrawing his pension from State Bank of Patiala, Manimajra Branch, Chandigarh. The action of recovery from the pension of the petitioner has been taken by the respondent No.3 i.e. the Manager, State Bank of Patiala, Manimajra Branch, Chandigarh and not by the respondent No. 1 and 2.”

As per the reply of the State, no direction was given by the State to the respondent-Bank to recover the amount.

Today, during course of hearing, learned counsel for the respondent-Bank stated that vide letter dated 01.06.2015, a direction was received by the Bank for initiating the recovery of the excess amount. The record has been produced by Sh. Ved Parkash Kataria, Deputy Manager, State Bank of India, who was asked to appear in person to show the record as to on what basis the recovery was being done.

Learned counsel for the petitioner states that once there is no order of recovery passed by the Bank or the State of Punjab, no recovery could have been effected from the petitioner. Further, for effecting the recovery, the rules of natural justice are to be observed by the respondents

by giving an opportunity of hearing to explain his side before any recovery is to be ordered. As no process was followed before effecting the recovery, the recovery done by the respondents is contrary to the settled principle of law and hence, the respondents should be directed to refund the amount which has been recovered from the pensionary benefits of the petitioner.

Counsel for the State again stick to the affidavit which has been filed by the State that there was no direction given by the State to the Bank to effect the recovery and therefore, the recovery was not upon their direction.

On the other hand, counsel for the respondent-Bank states that vide letter dated 01.06.2015, a direction was given to effect the recovery of the excess amount paid to the retirees and therefore the recovery was ordered on the direction of the State of Punjab. The said letter was written by Deputy Controller, Finance and Accounts to effect the recovery and deposit the amount in the State Treasury.

Be that as it may, once there is no order of recovery, the respondents could not have recovered the amount. Before effecting the recovery, a show cause notice is must giving the details as to on what account, the recovery is being ordered. It is only after going through the reply, if any, filed by a concerned employee, the recovery can be effected. In the present case, no such procedure was followed. Even as of today, there is no order for effecting the recovery from the petitioner either passed by State of Punjab or by the Bank. Under these circumstances, the recovery which has been effected from the pension of the petitioner is against the settled principle of law i.e. nobody can be condemned unheard. In the present case, not only the petitioner has been condemned but even punished

by effecting the recovery from the petitioner. It is a settled principle of law that even if an amount has been paid to an employee wrongly or under mistaken belief, the same can only be recovered after issuance of show cause notice. Even if the rules does not permit so but rules of natural justice stand violated in case the recovery is done without giving any opportunity of hearing. The Hon'ble Supreme Court of India in **Chamoli District Co-Operative Bank Ltd. through Its Secretary/Mahaprandhak and another Vs. Raghunath Singh Rana and others, 2016 (12) SCC 204**, held that even where there are no specific statutory rules regarding the observations of rules of natural justice still, due hearing is to be given to an employee/person, in case the said order causes prejudice to him/her. The relevant paragraph of the judgment 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.”

Further, a Division Bench of this Court while deciding **CWP No.3756 of 1986 titled as Lekhu Singh Vs. The Punjab SC Land Development and Finance Corp. Chandigarh decided on 22.09.1993,**

held that the opportunity of hearing is a basic requirement, which has been extended to every action, which has adverse civil or penal consequences.

The relevant portion of the said 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 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.”

In the present case, it is clear that the recovery which was done from the petitioner amounting to Rs.24,403/- is contrary to the settled principle of law. The said action is set aside.

The respondent-Bank is directed to refund the said amount to the petitioner within a period of two months from the receipt of copy of this order. A liberty is granted to the respondents to pass appropriate orders, in case, it is permissible under law and the facts of this case that the recovery can be ordered from the petitioner in respect of any amount which might have been given to him under the mistaken belief.

The writ petition stands allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

March 05, 2019
harsha

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