

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 55 of 2016
Date of Decision : 28.02.2019

Santosh Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the claim which is being made by the petitioner is that after her retirement, a sum of ₹3,43,229/- has been recovered from the gratuity on account of excess payment made to her by granting her increment for which she was not entitled, as she had not passed the type test due to which the increment could not have been released to the petitioner.

The facts narrated in the present writ petition are that the petitioner joined as a Clerk on 06.06.1987. While working she passed B.Ed. examination in the year 1990 and also passed Assistant Grade examination in the year 1996. The petitioner was promoted as Social Mistress and she continued working as such till she superannuated on 31.01.2015. After her retirement, the pension case was submitted by the department to the

Accountant General, Punjab for necessary action and the pension papers of

the petitioner were returned by the Accountant General, Punjab on 18.11.2014 on the ground that the annual increments, which were granted to the petitioner, could not have been granted on account that the petitioner has not passed the type test. The relevant objection as raised is as under:-

“As per note given on form pen 15 annual increments were allowed inadvertently because of not passing the typing test required for earning annual increments as per Punjab Government letter dated 27.08.1996. Exact position in this regard may be intimated. Action taken in terms of Punjab Government letter dated 27.08.1996 may be intimated. Necessary recovery if any, due to wrong fixation of pay may be made at your own end. Service verification upto date of retirement 2015 may be updated.”

To comply with the objection raised by the Accountant General Punjab, the respondents re-fixed the salary of the petitioner by withdrawing the increments, which were allowed to her and calculated the recovery to the tune of ₹3,43,229/-. The said amount was ordered to be deducted from the DCRG admissible to the petitioner after retirement. The challenge in the present writ petition is to the said recovery.

Learned counsel for the petitioner states that as per the settled principle of law, no recovery could have been ordered from the petitioner after the retirement and further, the re-fixation of the salary of the petitioner by withdrawing the amount and that too without giving any opportunity of hearing to the petitioner, is against the principles of Natural Justice and, therefore, even the re-fixation done by the respondents is contrary to the settled principle of law.

After the notice of motion was issued on 07.01.2016, the reply

has been filed by the respondents. In the reply, it has been stated that the

petitioner was required to pass a type test as per the Circular issued by the Government of Punjab on 09.06.1992. The type test was to be passed within a period of one year of his/her appointment and in case of non-passing of the said test, annual increment of the petitioner was required to be stopped as she was not entitled for the increment. It has further been mentioned that after the objection was taken by the Accountant General, Punjab, the pay of the petitioner was re-fixed and the excess amount was recovered. The relevant paragraph of the reply is as under :-

“(vi) That petitioner retired from service on dated 31.01.2015 whereas she was working as Social Studies Mistress at Government Senior Secondary School Lang, Patiala. Respondent No. 4 being competent authority, sent the pension case of the petitioner to respondent No. 5 for further necessary action and the same was returned back by the above said authority raising objections vide letter dated 18.11.2014 (Annexure P-1). It is necessary to mention here that copy of the above said letter had also been endorsed to the petitioner by respondent No. 5 for information and necessary action, if any, and it was also got noted by the petitioner by reaching in person in the office of respondent No. 4.

(vii) That after calculating the overpayment made to the petitioner, pension case of the petitioner has been sent to respondent No. 5 again and the above said authority, vide order No. PEN-05/2181432962/2014-15/PE/15/10/80069242, dated 19.01.2015, copy appended as Annexure R-1/5, issued Certificate & Report and Pension Payment Order in favour of the petitioner. It is submitted that in pursuance of the above said order dated 19.01.2015, issued by the respondent No. 5, all the admissible pensionary benefits have been paid to the petitioner. It is relevant to mention here that in view of the circular letter dated 09.06.1992, petitioner was entitled to

annual increments between the period from 06.06.1987 i.e. date of appointment to 09.06.1992 i.e. date of issuance of circular letter issued by department of Personnel. It is further submitted that keeping in view the above facts, revised pension case of the petitioner will be sent to the respondent No. 5 in due course of time after recording the necessary entries in the service record of the petitioner.”

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

It is an admitted case that the pay of the petitioner was re-fixed after she superannuated and only ground given to re-fix the pay was that petitioner was not entitled for the increment, which the petitioner continued to get after the year 1992 till her retirement, due to non-passing of the type test. If the petitioner was not entitled for increment, it was the duty of the respondents to stop the same at relevant time. There is no misrepresentation on behalf of the petitioner in any manner to claim the said benefit. Further, the petitioner was promoted as a Teacher i.e. Social Mistress. Nothing has been mentioned as to whether the Social Mistress is also required to pass the type test or not? The said averments are missing from the reply.

It is a settled principle of law settled by Hon'ble the Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334***, decided on 18.12.2014 that recovery from the retired employee is impermissible. In the present case, recovery has been done from the petitioner after her retirement. Even her salary was re-fixed after the retirement. The relevant paragraph of the said judgment is as under:-

“12. 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.”*

Learned counsel for the respondents is unable to persuade this Court that the case of the petitioner is not covered by the above said judgment. Even otherwise, no hearing has been given to the petitioner before passing of the order re-fixing the salary of the petitioner by withdrawing the increment. It is a settled principle of law as settled by the Division Bench of this Court in ***Lekhu Singh Vs. The Punjab SC Land Development & Finance Corporation, Chandigarh, 1994(1) S.C.T. 748*** that any order which causes prejudice to an employee, cannot be passed without granting an opportunity of hearing. The relevant portion of the said judgment is as under:-

“6. 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, 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.”

Learned counsel for the petitioner states that at present the petitioner restricts her prayer only for refund of the recovered amount and not for re-fixation of her salary.

In view of the above, the recovery of amount of ₹3,43,229/- from the gratuity of the petitioner is held to be bad as the same is against the settled principle of law. The respondents are directed to refund the same within a period of two months from the receipt of copy of this order. In case the amount is not refunded within the aforesaid period, the petitioner shall also be entitled for interest after the expiry of two months till the amount is refunded to the petitioner @ 9% per annum.

The writ petition is partly allowed in above terms.

February 28, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes