

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8421-2015

Date of decision: - 09.07.2019

Jagdish Parshad

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Naveen Daryal, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 11.05.2011 (Annexure P-2) by which in the pension payment order a sum of ₹1,37,641/- has been ordered to be recovered out of the gratuity payable to the petitioner.

The claim of the petitioner is for the release of the said amount which has been recovered from his pensionary benefits.

The facts as mentioned in the writ petition are that petitioner was working as an Assistant Foreman with the respondents and he retired w.e.f. 30.06.2009 and while preparing the details of the entitlement of the petitioner, the respondents took a decision to recover a sum of ₹1,37,641/- from the gratuity of the petitioner, which is clear from order

dated 11.05.2011 (Annexure P-2), but the grievance of the petitioner is that the said recovery has been done from him without issuing of any show cause notice or any charge-sheet and no rules of natural justice have been followed while effecting the said recovery and that too after his retirement.

Upon notice of motion, the respondents have filed the reply.

In the reply, respondents have stated that the recovery has been made against shortage of oil and missing parts of the transformers, which was entrusted to the petitioner. According to the respondents, the said recovery has been done from the petitioner on the basis of the survey report where shortage and missing parts have been reported.

During the hearing, counsel for the respondents fairly admitted that there is no order which has been passed wherein the petitioner is held liable to refund of ₹1,37,641/-. He submits that the amount has been calculated keeping in view the survey report wherein the shortage and oil missing parts has been attributed to the petitioner.

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

It is a settled principle of law that no order which causes prejudice to an employee can be passed without giving an opportunity of hearing. Before the recovery order is passed, an employee is entitled to be told about the allegations alleged against him/her and after seeking his/her reply, an order needs to be passed giving the justification as to why the reply filed by an employee has not been found satisfactorily and an employee is liable to refund the amount. Admittedly, in the present

case, the recovery has been done without following the due procedure of law, as envisaged under the rules and no notice whatsoever has been served upon the petitioner before effecting the recovery and rather, there is no order passed holding the petitioner liable for the recovery to the tune of ₹1,37,641/-. In the absence of any order, which makes the petitioner liable for the recovery, the recovery of the above said amount from the retiral benefits of the petitioner is without any justification and jurisdiction as well.

In this regard, reliance can be placed upon a judgment of this Court rendered in **Lekhu Singh Vs. The Punjab SC Land Development & Finance Corp., Chandigarh, 1994(1) S.C.T. 748**, wherein, it has been held that any order passed by the department without affording an opportunity of hearing, which causes prejudice to an employee, is liable to be set aside. The relevant para of the said order 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 no show cause notice whatsoever was ever served upon the petitioner and rather there is no order by which the petitioner has held liable for the recovery and under these circumstances, the recovery of the amount from the gratuity of the petitioner by the respondents cannot be sustained.

In view of the above, action of the respondents for recovering an amount of ₹1,37,641/- from the retiral benefits of the petitioner is contrary to the settled principle of law and hence, is set aside. The respondents are directed to refund the amount so deducted from the petitioner within a period of two months from the date of receipt of certified copy of this order.

Present writ petition stands disposed of in the above terms.

July 09, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes