

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 431 of 2017
Date of Decision : 11.04.2019

Smt. Surinder Kumari

...Petitioner

Versus

Punjab State Power Corporation Limited and another

...Respondents

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

Present: Ms. Saguna Arora, Advocate for the petitioner.

Mr. Piyush Khanna, Advocate for the respondents.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the grievance which is being raised by the petitioner is that vide order dated 08.12.2016 (Annexure P-2), a recovery amounting to ₹2,88,922/- was ordered on the ground that the excess family pension was paid to the petitioner. The said order of recovery is under challenge in this writ petition.

As per the averments made in the writ petition, husband of the petitioner, namely, Ramesh Chander was working with erstwhile Punjab State Electricity Board, where he joined as a Lineman on 01.03.1980. While working as such, he, unfortunately, died on 20.06.2005. After the death of her husband, petitioner was granted the family pension w.e.f. 21.06.2005 and she was continuously getting the same.

A letter dated 08.12.2016 was received by the petitioner,

wherein, she was informed that she was entitled for basic salary of ₹6786/- w.e.f. July, 2014 instead of ₹21,244/- and, therefore, an excess amount of ₹2,88,922/- was paid to the petitioner and the same will be recovered from her pension @ ₹6000/- per month starting from December, 2016 onwards till November, 2020. The said order has been challenged by the petitioner in this writ petition on the ground that no recovery could be ordered from the pension of a person and further the said recovery was done from the petitioner without following the rules of natural justice. As per the averments made in the writ petition, no show cause notice whatsoever was given to the petitioner before passing the order dated 08.12.2016 (Annexure P2). While issuing notice of motion, this Court vide order dated 13.01.2017, stayed the recovery.

In reply, which has been filed by the respondents today, it has been stated that the petitioner was entitled for special pension till the date on which late husband of the petitioner would have attained the age of superannuation and after the said date, petitioner was entitled for normal pension. As per the record, husband of the petitioner was to attain the age of superannuation on 30.06.2014 and, therefore, till the said date, petitioner was entitled for the special pension i.e. ₹21,244/- and thereafter, normal pension amounting to ₹6720/-. As per the reply, petitioner continued getting the special pay till 30.06.2015 after which, the mistake was noticed and the petitioner was given the normal pension of ₹6720/- and the recovery of the excess amount was ordered. There is no mention in the reply that rules of natural justice were followed by the respondents while passing the order of the impugned recovery.

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

There is no allegation in the reply that the petitioner was responsible for the payment of excess pension in any manner. No malafide or any action has been attributed to the petitioner due to which, it could be said that the petitioner was getting excess amount with due knowledge. Petitioner is a widow of a Lineman and in the present case is also not so well versed to know how much amount of pension she was entitled for and upto what date so as to know that the amount, which is being deposited in her account by way of pension, was the correct amount or the same was being deposited as a matter of mistake. In the absence of any allegation that the excess amount was received by the petitioner with due knowledge, no recovery could have been ordered from the petitioner. Even otherwise, the order dated 08.12.2016 cannot be sustained in the eyes of law for the reason that no order will cause prejudice to an employee or a person can be passed without affording an opportunity of hearing and following due procedure of law.

In the present case, it has been admitted that no opportunity of hearing on any kind of show cause notice was given to the petitioner before the order of recovery was passed by the respondents. Impugned order of recovery does not show that any show cause notice was issued before passing the order of recovery. A Division Bench of this Court in ***Lekhu Singh Vs. The Punjab SC Land Development & Finance Corporation, Chandigarh, 1994(1) S.C.T. 748*** has held that where any order which causes civil/penal consequences and causes prejudice to an employee,

cannot be passed without observing the rules of natural justice and any order passed in the contravention of rules of natural justice is liable to be set-aside. 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.”

In view of the above, the impugned order of recovery dated 08.12.2016 (Annexure P-2) being contrary to the law is set-aside. In case any recovery has been done by the respondents in pursuance to the said order before the interim order was passed in favour of the petitioner in January, 2017, the same will be refunded to the petitioner within a period of two months from the receipt of copy of this order.

Writ petition stands allowed in above terms.

April 11, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*