

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 09.01.2020****RSA No.2494 of 1997 (O&M)**

State of Punjab & others

...Appellants

Vs.

Jarnail Singh (deceased) through his LRs

...Respondent/s

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Kumar, DAG, Punjab.

None for respondent/s.

RAJIV NARAIN RAINA, J. (ORAL)

1. The State of Punjab is in second appeal aggrieved against the judgment and decree passed by the learned trial Court on 03.05.1991 granting relief to the plaintiff/respondent in respect of impugned order dated 7.8.1987 by setting it aside. Such decree stands affirmed by the learned first Appellate Court vide judgment and decree dated 20.03.1997.

2. Initially, the plaintiff/respondent sought a decree in a suit for declaration to the effect that the impugned orders dated 27.6.1988 and 7.8.1987 are illegal, void and ineffective qua the rights of the plaintiff. Admittedly, impugned order dated 27.6.1988 has been upheld by both the courts below and there is no ground or reason to interfere with that finding against the plaintiff/respondent.

3. However, regarding impugned order dated 7.8.1987 by which two annual grade increments of the late respondent were withheld with future effect, that was a major punishment and the procedure for enquiry had to be followed in proof of misconduct. After appreciating the evidence brought on record and the material on the enquiry file, the learned trial Court

found that one material witness, namely, Chanan Singh, UTI was examined by the Enquiry Officer and after the conclusion of his cross-examination by the plaintiff, the said witness was re-examined by the Presenting Officer. But thereafter, the plaintiff/respondent was not given an opportunity to further cross-examine this witness with respect to the facts emerging in his re-examination by the Presenting Officer. This, the trial Court has rightly observed was in breach of the principles of natural justice and had prejudiced his defence since, ex facie, full opportunity was not given to him to defend his case to shatter the testimony. Accordingly, the finding was returned that the enquiry proceedings stand vitiated and I have no reason to differ with that lawful finding.

4. As a result, the appeal deserves to fail with a direction that in case any money due accrues in favour of the estate of the plaintiff/respondent or the amount which may be determined in execution proceedings, if taken out by the legal heirs and representatives of the deceased employee, would be paid to them, which have been illegally withheld under colour of the impugned administrative order dated 7.8.1987 held to be bad.

5. However, in case if any recovery is proposed to be made by the State at this late hour, any such attempt of recovery against pending dues is overruled in view of the law laid down by the Supreme Court in State of Punjab & others Vs. Rafiq Masih (White Washer) & others, AIR 2015 SC 696.

6. The appeal is accordingly dismissed. The judgments and the decree of the courts below are affirmed.

7. A copy of this order shall be sent to the respondents for their knowledge at the expense of the appellants and for taking further steps.

09.01.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>