

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

**CWP No. 11090 of 2016
Date of decision: 13.02.2020**

Surinderjit Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rahul Bhanot, Advocate for
Mr. Sameer Sachdeva, Advocate
for the petitioner.

Mr. Mehardeep Singh, Addl. AG Punjab

Mr. Ajay Kumar Thakur, Advocate for
Mr. Vikas Chatrath, Advocate
for respondent Nos.2 and 6.

In the present writ petition the challenge is to action of the respondents in reducing the pension of the petitioner and effecting consequent recovery from the petitioner on the ground that without there being an order of refixing the pension and consequent recovery of the excess payment passed after affording an opportunity of hearing to the petitioner, not only the pension of the petitioner has been reduced but even the recovery at the rate of Rs.3300/- per month is being effected from the petitioner, which is contrary to the settled principle of law.

As per the averments made in writ petition, petitioner joined as Constable on 27.06.1985, thereafter, he earned various

promotions during his service career and after rendering about 20 years of service, petitioner sought voluntary retirement which was allowed to him with effect from 31.08.2005. At the time of the retirement, the pension of the petitioner was fixed @ Rs.2910/- per month and subsequently, the same was revised to Rs.3637/- with effect from 01.09.2005.

As per the averments made in the writ petition, respondent-bank started effecting recovery from the pension of the petitioner in February, 2016. On inquiries by the petitioner, he was told that the pension of the petitioner was wrongly fixed as Rs.14129/- and the said mistake has been rectified and the pension of the petitioner has been fixed at Rs.6448/- per month and the excess payment made to the petitioner will be recovered in the monthly installment from the pension at the rate of Rs.3300/- per month. Petitioner has challenged the said action of the bank in reducing the pension as well as effecting the recovery in the present writ petition.

Upon notice of motion, respondents have filed the reply. In the reply filed by the Bank, it has been stated that the pension of the petitioner was wrongly fixed and the said mistake was due to the technical error in the software. The said error was noticed during the Audit in year 2013 wherein it was realised that due to the wrong fixation of pension of the petitioner, petitioner has received an excess amount of Rs.3,51,589/-. The error was rectified and the excess amount, being the public money, is rightly being recovered from the petitioner. In the reply, the respondents have conceded that there is no

order, which has been passed reducing the pension of the petitioner and the consequently effecting recovery from the petitioner but the same was done on the basis of the audit report.

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

It is a settled principle of law that nobody can be condemned unheard. In the present case, the petitioner has been caused prejudice by the respondent by reducing his pension and effecting the recovery from the pension of the excess amount without giving any opportunity of hearing. As per the settled principle of law, no adverse order can be passed against any person without affording a hearing or intimation of such move. Hon'ble Supreme Court of India in **M/s Daffodills Pharmaceuticals Ltd & another Vs. State of U.P. & Another, 2019 (12) JT 283** has held that any order which is passed without affording an opportunity of hearing to an employee, where the proposed order causes civil consequences or prejudice to the said employee, same cannot be sustained in the eyes of law. An employee is entitled for an intimation and an opportunity to raise objection against the proposed action before any adverse order is passed. The relevant paragraph of the said judgment are as under :-

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which

the State resorted to-against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.

16. The High Court, in the opinion of this Court, fell into error in holding that in matters of award of public contracts, the scope of inquiry in judicial review is limited. Granted, such jurisdiction is extremely circumscribed; no doubt the Court had refused to grant relief to Daffodils against its plea of wrongful rejection of its tender. However, what the impugned judgment clearly overlooks is that the action of the state, not to procure indefinitely, on an assumption of complicity by Daffodils, was in flagrant violation of principles of natural justice.”

This Court also, while deciding CWP No.16858 of 2017 decided on 25.01.2019 titled as Shanti Devi Vs. State of Punjab and others held that no order which causes prejudice to an employee, can be passed unilaterally without affording an opportunity of hearing and

in case any such action is taken, the same is liable to be set aside being impermissible and violative of rules of natural justice. The relevant paragraph of the said judgment is as under:-

“It is settled principle of law that any order which causes prejudice to a person, the rules of nature justice shall be followed. No unilateral decision can be taken even if one party thinks that the mistake is being rectified. In the present case, the recovery to the tune of Rs.30,315/- was being made from the petitioner and that too without even informing her or giving the reasons for the same. Once, it has been admitted that the excess payment was made, the same could not have been recovered without any show cause notice to the petitioner and after considering the reply, if any, clarifying the position.

7. Furthermore, there is no order even passed by the respondents for effecting the recovery from the petitioner. The respondents on their own decided to rectify their mistake by withdrawing the amount by putting a cut on the pension of the petitioner. This action of the respondents is not supported by any law rather the same is contrary to the settled principle of law. Hon'ble the Supreme Court in the case of ***Chamoli District Cooperative Bank Limited through its Secretary/Mahaprاندhak and another v. Raghunath Singh Rana and others, 2016(3)***

S.C.T. 89: 2016 (12) SCC 204, has held that even where there are no specific statutory rules regarding the observance of the rules of natural justice, still, it is incumbent that the concerned person is given due opportunity of hearing before passing any order, which is causing prejudice to him/her. The relevant paragraph of the said 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.”

8. Division Bench of this Court while deciding *CWP No.3756 of 1986, decided on 22.09.1993, titled as Lekhu Singh v. The Punjab SC Land Development & Finance Corporation, Chandigarh*, has held that the concept of the opportunity is a basic requirement which has to be extended to every action which has adverse civil or penal consequence. 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.”

9. In view of the above, the action of the respondents in recovering the amount of Rs.30,315/- from the pension of the petitioner is set-aside. The respondents are directed to refund the said amount to the petitioner within a period of two months from the receipt of the copy of this order. Thus, the present writ petition stands allowed.

10. However, the respondents are given liberty to proceed according to rules and after following the due process of law including the issuance of show cause notice to the petitioner, in case they found that the petitioner has been paid excess amount and the said excess amount can be recovered as per settled principle of law.”

In the present case, learned counsel appearing on behalf of the bank concedes that the pension of the petitioner was unilaterally re-fixed and reduced and the consequent recovery of the excess

amount paid to the petitioner was ordered. Learned counsel further concedes that no order has been passed to the said effect and the action was taken by the bank on the basis of audit report itself. This action of the respondent is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in M/s Daffodills' case (supra) and by this Court in Shanti Devi's case (supra) and, therefore, the said action cannot be sustained in the eyes of law and the reduction of the pension of the petitioner and the consequent recovery is liable to be set aside and is accordingly set aside.

In the facts and circumstances of this case, the respondent will be at liberty to initiate action against the petitioner, if permissible under law in accordance with the rules and regulations, by duly affording opportunity of hearing to the petitioner. The writ petition is allowed in above terms. Petitioner will be entitled for the release of his pension as he was getting before it was refixed by the respondents and the recovered amount be refunded to the petitioner, but same will be subject to any fresh order which the respondents might pass after giving due opportunity to the petitioner, as noted above.

February 13, 2020
priyanka/sangeeta

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes /No