

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

**1. CWP No.17286 of 2015 (O&M)
Date of decision : March 06, 2020**

Ajmer Singh Petitioner

Versus

State of Punjab and others Respondents

2. CWP No.19253 of 2015 (O&M)

Sant Ram Petitioner

Versus

State of Punjab and others Respondents

3. CWP No.7659 of 2016 (O&M)

Smt. Balwant Kaur Petitioner

Versus

State of Punjab and others Respondents

4. CWP No.9399 of 2016 (O&M)

Surinder Kaur Petitioner

Versus

State of Punjab and others Respondents

5. CWP No.26721 of 2017 (O&M)

Sham Lal Goyal Petitioner

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Gopal Singh Nahel, Advocate for the petitioner
in CWP No.17286 of 2015.

Mr. B.S. Baath, Advocate for the petitioner
in CWP No.19253 of 2015.

Mr. P.S. Khurana, Advocate for the petitioner
in CWP No.7659 of 2016.

Mr. Karamjit Verma, Advocate for the petitioner
in CWP No.9399 of 2016.

Mr. Arav Gupta, Advocate for the petitioner
in CWP No.26721 of 2017.

Ms. Devki Anand Sullar, AAG, Punjab.

Mr. Vikas Chatrath, Mr. Amanjot Singh Sidhu and
Mr. Ajay Kumar Thakur, Advocates
for respondent Nos.4 and 5 in CWP No.17286 of 2015,
for respondent Nos.4 and 5 in CWP No.9399 of 2016.

Mr. Mahesh Dheer and Mr. A.S. Jaswal, Advocates
for respondent Nos.2 and 3 in CWP No.19253 of 2015,
for respondent Nos.4 and 5 in CWP No.7659 of 2016 and
for respondent Nos.4 and 5 in CWP No.26721 of 2017.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, all the writ petitions details of which have been given in the heading of this order, are being decided as all the writ petitions involve the same question of law as well as similar facts. For the purpose of the present order, the facts are being taken from CWP No.17286 of 2015 titled as ***“Ajmer Singh v State of Punjab and others”***.

The grievance which is being raised in the present writ petition is that the petitioner is a retired employee and now, recovery of amount has been ordered to be done from his pension on the ground that his pension was wrongly fixed at the time of his retirement or thereafter at the time of revision of pension in view of the recommendations of the Pay Commission and he has been paid excess amount beyond his entitlement, which need to be recovered. The order of the recovery of amount passed against the

petitioner, is under challenge in the present writ petition.

The petitioner was appointed in the year 1954 with the respondent-Department and he retired from service on attaining the age of superannuation on 31.08.1990. After the retirement of the petitioner, his pensionary benefits were released and the respondents fixed the pension of the petitioner @ ₹7,621/- per month. Petitioner continued to get the said benefit for a period of 24 years when the petitioner was informed by a letter dated 26.06.2014 (Annexure P-1) that the pension of the petitioner was wrongly fixed @ ₹7,621/- per month instead of ₹7,126/- (₹6,478/- + ₹648/- benefit of old age pension) per month.

Keeping view the said discrepancy, according to the respondents, the petitioner was paid excess amount of ₹1,42,280/- which was ordered to be recovered in the monthly installments of ₹2,000/-. After receiving the said letter dated 26.06.2014 (Annexure P-1), the petitioner made a representation to the respondents that no recovery can be done from a retired employee. Despite the fact that the petitioner requested the respondents not to effect the recovery, the recovery from the pensionary benefits of the petitioner has been effected till August, 2015. Thereafter, in pursuance to the interim order passed by this Court, recovery from the pension was stayed.

The challenge to the impugned order of recovery is on the ground that without giving any opportunity of hearing to the petitioner, before arriving at a conclusion that the petitioner was paid an excess amount of ₹1,42,280/-, recovery order has been passed against the petitioner.

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

reply filed by the respondent-bank, it has been admitted by the respondents that before passing the order of recovery, no notice was served to the petitioner.

Learned counsel appearing on behalf of the respondents argues that once the benefits over and above the entitlement of the petitioner was released to him, the same has rightly been ordered to be recovered from the petitioner and no notice was required to be served for the said purpose.

In the reply, the respondents have stated that the petitioner was given the pension of ₹7,621/- per month whereas, the petitioner was only entitled for a sum of ₹7,126/- and therefore, the excess amount paid to the petitioner to the tune of ₹1,42,280/- has rightly been directed to be recovered from the petitioner in the monthly installments of ₹2,000/-.

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

It is a matter of the fact that the respondents fixed the pensionary benefits of the petitioner including the pension to be paid to him. The petitioner had no role in the fixation of the pension for which he became entitled after the retirement. The said fixation of pension was done in the year 2009 w.e.f. 01.01.2006 and the petitioner continued to get the said pension till the respondents realized that the petitioner is being paid the pension beyond his entitlement and decided to recover the amount w.e.f. July, 2013.

As per the respondents, the petitioner was entitled for the pension to the tune of ₹7,126/- instead of ₹7,621/- and therefore, the recovery of the excess amount is sought to be done from the petitioner.

The only argument, which is being raised on behalf of the petitioner is that no order causing prejudice to an employee can be passed without affording due opportunity of hearing and considering the objections of the said employee against the proposed recovery of the excess amount.

Learned counsel of the petitioner argues that in the present case, the order of recovery of the excess amount has been passed unilaterally by the respondents without giving any opportunity of hearing to the petitioner. Learned counsel for the petitioner has further argued that in case, any order which causes prejudice to the petitioner is to be passed by the respondents, it is incumbent upon the respondents to issue show cause notice and seek reply of the petitioner and then, after dealing with the objections so raised against the proposed action, the authority can pass appropriate order.

Learned counsel for the respondents is unable to produce any document to show that before effecting the recovery of the excess amount, any show cause notice was served upon the petitioner so as to seek objections from the petitioner against proposed action. That being so, the order of the recovery passed by the respondents is contrary to the principles of natural justice and therefore, cannot be sustained.

In a recent judgment passed by Hon'ble the Supreme Court of India in the case of **M/s Daffodills Pharmaceuticals Limited and another vs. State of U.P. and another 2019 (12) JT 283** it has been held that no person can be inflicted with an adverse order without being afforded a minimum opportunity of hearing and a prior intimation of the same. The relevant paragraph of the judgment is 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 judgement 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.*

Further this Court while deciding CWP No.16858 of 2017 on 25.01.2019 relying upon ***“Chamoli District Co-operative Bank Limited through its Secretary/Mahaprandhak and another v Raghunath Singh Rana and others”***, 2016 (12) SCC 204, has set aside the reduction in pension, which was done without affording an opportunity of hearing.

Relevant paragraph of the judgment is as under:-

“It is a 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.

*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/Mahaprandhak and another Vs. Raghunath Singh Rana and others, 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.*

In the present case, it has been admitted by the learned counsel for the respondents that no opportunity of hearing was given to the petitioner before re-fixing his pension after his retirement. That being so,

the respondents have passed order dated 26.06.2014 (Annexure P-1) unilaterally, which caused prejudice to the petitioner and which is contrary to the law laid down by Hon'ble the Supreme Court of India in ***M/s Daffodills Pharmaceuticals Limited's*** case (*supra*).

That being so, the order imposing the recovery of the excess amount upon the petitioner to be done from the petitioner, which is unilaterally passed by the respondents and that too without adhering to the principles of natural justice, is contrary to the settled principle of law as noticed above and is accordingly set aside.

Learned counsel appearing on behalf of the respondent-bank states that at the time of the retirement or the re-fixation of pension, the petitioner had given an undertaking that in case, any amount is paid to the petitioner beyond his entitlement, the same can be recovered and therefore, before passing the order of recovery, respondents were not required to serve any notice upon the petitioner.

The argument which is being raised on behalf of the respondent-bank is fallacious and is liable to be rejected. The undertaking only enables the respondents to recover the amount, in case the same has been paid beyond the entitlement of the petitioner. The undertaking does not give any right to the respondents to pass an order of recovery of the excess amount unilaterally and that too without giving any opportunity of hearing to the concerned employee. An employee is entitled to know the reasons of the recovery of the excess amount and has every right to object the same in case permissible by law. It is only in case, the respondents do not agree with the objections raised by the concerned employee and recovery of the excess

amount is permissible under the law, only in that case, if there is any undertaking, the respondents can recover the excess amount. Undertaking given by an employee itself does not give any right to the respondents to unilaterally pass an order without observing the principles of natural justice. Therefore, even if there is an undertaking given by the petitioner at the time of receiving the benefit to recover the amount, which according to the respondents was beyond the entitlement of the petitioner, still, it is incumbent upon the respondents to follow the principles of natural justice before passing any order of the recovery.

Keeping in view the above, all the aforesaid writ petitions are allowed. The orders of the recovery are set aside. The respondents will be within their jurisdiction to proceed against the petitioner afresh, in case permissible, after following due procedure of law.

The respondents are directed to refund the amount so recovered from the petitioners within a period of three months from the date of receipt of certified copy of this order. In case, the respondents choose to proceed against the petitioner afresh and pass any order, wherein the petitioners are again held liable for the recovery and the said order is passed within a period of three months, the respondents will not be under obligation to refund the said amount but the petitioners will be at liberty to agitate their claim before the appropriate Forum.

(HARSIMRAN SINGH SETHI)
JUDGE

March 06, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

Yes