

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

CWP No. 24972 of 2016
Date of Decision : 27.02.2020

Jasbir Singh

....Petitioner

Versus

The Punjab State Power Corporation Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Pankaj Sharma, Advocate for the petitioner.

Ms. Anupam Bhanot, Advocate for the respondents.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to the order dated 23.12.2015 (Annexure P-6), by which recovery to the tune of ₹1,21,266/- has been imposed upon the petitioner and the same has been recovered from his gratuity.

As per the facts mentioned in the present writ petition, petitioner retired on attaining the age of superannuation on 31.05.2015 while working on the post of Junior Engineer. After the retirement, while releasing the gratuity, a sum of ₹1,21,266/- has been recovered from the gratuity of the petitioner. It is the contention of the petitioner that the said recovery, which has been done by the respondents, is not permissible

keeping in view the fact that before effecting recovery, no show cause notice was given to him and further, no recovery can be done from him after his retirement keeping in view the law laid down by the Hon'ble Supreme court of India in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.*

Upon notice of motion, respondents have filed the reply. In the reply, respondents have stated that the stock, which was under the custody of the petitioner, has been embezzled and even an FIR has also been registered against the unknown person. Respondents have stated that the materials, which were under the custody of the petitioner, were embezzled. As per the reply, conductors from 66 KV Sub Station of the electricity yard were missing apart from 2300 meter of silver wire amounting to ₹98,900/- and as the shortage of material was during the custody of the petitioner, the said amount has been recovered from the pensionary benefits of the petitioner and, therefore, no grievance can be made by the petitioner qua the said recovery.

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

It has been admitted by the respondents that before effecting the recovery by attributing the shortages to the petitioner, no enquiry was done by the respondents. Even a show cause notice was not given to the petitioner to explain with regard to the said allegation shortages. It is a settled principle of law that in case any shortage or any allegation is being attributed to an employee, he/she has to be given an opportunity to defend himself/herself and only after observing the rules of natural justice, the

respondents can arrive at a conclusion as to whether an employee is guilty of the allegation or not?

The Hon'ble Supreme Court of India in ***M/s Daffodills Pharmaceuticals Limited and another Vs. State of U.P. And another***, 2019 (12) JT 283, has held that an employee is entitled to know as to on what account, the respondents are proposing to proceed against him/her before passing any order which causes prejudice to him. The order passed in violations of the rules of natural justice cannot be sustained in the eyes of law. Relevant para of the judgment in ***M/s Daffodills Pharmaceuticals Limited's case (supra)*** 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 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."

Further, 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 the basic requirement of opportunity of hearing has not been afforded to the other side while passing adverse order, having penal/civil consequences, the said order cannot be sustained in the eyes of law. The relevant paragraph of the judgment 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, 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 the present case, the petitioner has been held guilty of the allegation of the embezzlement of the conductors missing from 66 KV Sub Station electricity yard as well as 2300 meter of silver wire missing amounting to ₹98,900/- which amount has been recovered from the petitioner without giving him any opportunity of hearing. Without their being any order holding the petitioner guilty of allegation, no recovery could have been ordered from the petitioner. Therefore, recovery of the

amount which has been done from the petitioner, is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in ***M/s Daffodills Pharmaceuticals Limited's case (supra)*** as well as by the Division Bench of this Court in ***Lekhu Singh's case (supra)***. That being so, the recovery which has been done from the petitioner is set-aside and the respondents are directed to refund the said amount of recovery to the petitioner within a period of two months from the date of receipt of certified copy of this order.

February 27, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*