

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

**CWP No.3447 of 2017 (O&M)
Date of decision : February 18, 2020**

Kulwinder Kaur (Retd.)

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vikas Chatrath, Mr. Ajay Kumar Thakur and
Mr. Santosh, Advocates for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the grievance of the petitioner is that vide order dated 31.08.2016 (Annexure P-1), a sum of ₹1,25,098/- has been recovered by passing a totally cryptic and non-speaking order and that too without observing the rules of natural justice.

As per the averments made in the writ petition, the petitioner retired from the Department of Education on 30.04.2016 after availing the benefits of two years of extension of service. After her retirement, as the benefits of the petitioner were not being released to her, she approached the respondents. The respondents re-fixed the salary of the petitioner while according sanction to the release of the pensionary benefits. By order dated 31.08.2016 (Annexure P-1), a sum of ₹1,25,098/- was recovered from the pensionary benefits of the petitioner, which has been impugned by the petitioner in the present writ petition.

The prayer of the petitioner is that after her retirement, her pay was re-fixed, without observing the rules of natural justice and therefore,

straightway passing the order of recovery and thereafter effecting the recovery from the pensionary benefits, is contrary to the settled principle of law and therefore, the impugned order of recovery dated 31.08.2016 (Annexure P-1) is liable to be set aside.

Upon notice of motion, respondents have filed reply. In the reply, the respondents defend the recovery, stating that the pay of the petitioner was re-fixed w.e.f. 01.01.2006 and while re-fixing the said pay, certain benefits for which the petitioner was not entitled, were extended to her. At the time of granting the approval to the pensionary benefits, the Accountant General, Punjab raised certain objections that the pay of the petitioner was wrongly fixed w.e.f. 01.01.2006 and the same should be re-fixed. After the re-fixation of the salary of the petitioner, respondents found that an excess payment of ₹1,25,098/- has been made to the petitioner, which has been rightly recovered from the petitioner as she had given an undertaking at the time of fixation of her salary w.e.f. 01.01.2006 that in case, it is found that the petitioner is not found entitled for the benefits of the fixation of the salary or the same was wrongly fixed, the petitioner will refund the same to the Government. A copy of the said undertaking is annexed with the reply as Annexure R-1.

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

The first question, which arises for the determination before this Court is whether the respondents have the jurisdiction to pass an order unilaterally of re-fixing the salary of an employee after the retirement and effecting the recovery of the same, even if there is an undertaking given by

the employee to refund the excess amount. Re-fixation of the salary is entirely different from the recovery of the excess amount. The re-fixation of the salary can only be done by the respondents after following the rules of natural justice. The employee is entitled to know as to on what account, the respondents are proposing to re-fix the salary so that, the employee can defend or object to the proposal of the department for re-fixation of the salary. The rules of natural justice demand that an employee has to be made aware of the proceedings, which are to be undertaken against him/her before any order causing prejudice to the employee, is passed.

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** has 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 judgement 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 her salary after her retirement. That being so, the respondents have passed an order unilaterally on 31.08.2016 (Annexue P-1), which caused prejudice to an employee 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 dated 31.08.2016 (Annexure P-1) is contrary to the settled principle of law noticed hereinbefore and therefore, the same cannot be sustained in the eyes of law and is consequently set aside.

In the facts and circumstances of this case, as the petitioner had already given an undertaking to refund the excess amount, in case any discrepancy is found by the Department at any given point of time, respondents are allowed to re-fix the salary of the petitioner but after

following the due procedure of law, in case, the same needs to be re-fixed. The respondents will give a show cause notice to the petitioner, so as to seek her explanation regarding the same and will form the opinion about the re-fixation only after objectively considering the reply filed by the petitioner and it is only in case, the reply of the petitioner is not found satisfactory, the appropriate speaking order will be passed.

In view of the above, the respondents are directed to refund the amount, which has been recovered from the pensionary benefits of the petitioner within a period of three months from the date of receipt of certified copy of this order.

It is made clear that in case, before the expiry of said three months, respondents pass a fresh order after observing the rules of natural justice, as stated hereinbefore, it will be within the jurisdiction of the respondents not to refund the amount, in case the petitioner is found liable for the recovery of the said amount.

The writ petition is allowed in the abovenoted terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 18, 2020

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes