IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16368 of 2017
Date of decision: 20.01.2020

Paramjit Singh .... Petitioner

versus

Punjab State Power Corporation Limited and others ... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harmanpreet Singh, Advocate for
Mr. J.S. Jaidka, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate and
Mr. Amanjot Singh, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J.

In the present writ petition, the grievance is being raised by the petitioner that the recovery of Rs.2,10,624/-, which has been effected in pursuance to the order dated 20.07.2017 (Annexure P/1) from the retiral benefits of the petitioner is contrary to the settled principles of law.

As per the averments made in the writ petition, the petitioner who was working as LDC with respondent No.3 retired on 30.04.2017. After his retirement, an order dated 20.07.2017 (Annexure P/1) was passed by the respondents, whereby, recovery of Rs.2,10,624/- was ordered to be effected from the retiral benefits of the petitioner. The said order of recovery is impugned in the present writ petition.

Learned counsel for the petitioner argues that the order of recovery has been passed by the respondents without holding any enquiry or without following rules of natural justice and, therefore, the recovery which has been ordered to be effected from the gratuity of the petitioner is arbitrary and illegal and the respondents are liable to refund the amount so recovered by them.

Upon notice of motion, the respondents have filed a reply. In the reply, it has been stated by the respondents that after the retirement of the petitioner, the benefit of the time bound promotional scale, which was extended to him, was withdrawn and keeping in view the withdrawal of the said benefit, the pay of the petitioner was refixed and the recovery of the excess amount paid to the petitioner was ordered. Respondents have not denied the fact that while refixing the pay of the petitioner and passing the order of recovery, no opportunity of hearing was extended to the petitioner and straightaway order of recovery of excess amount was passed against the petitioner.

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

It is not disputed by the learned counsel for the parties that the petitioner was working on a Class-III post. It is further not disputed that the pay of the petitioner was refixed after withdrawing the benefit of the time bound promotional scale unilaterally after his retirement. Further, learned counsel for the respondents admitted that no show cause notice was served upon the petitioner before effecting the recovery of the excess amount paid to the petitioner. That being so, it is clear that the recovery from the petitioner has been effected without following due procedure as envisaged under law. No order which causes prejudice to the employee can be passed without affording an opportunity of hearing.

The Hon'ble Supreme Court of India in the case of **Chamoli District Co-operative Bank Limited through its Secretary/Mahaprandhak and another Vs. Raghunath Singh Rana and others, 2016(12) SCC 204**, has held that any order, which is passed against an employee, violating the rules of natural justice is to be treated as bad in law and 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 causes 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."

The Hon'ble 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. 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.
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> 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's case (supra)** has set aside the reduction in pension, which was done without affording an opportunity of hearing. Relevant paragraph of the judgement 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.
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> 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 writ petition, a bare perusal of the impugned order of recovery would show that no reason has been given by the respondents for effecting the recovery from the petitioner. Further no opportunity of hearing was afforded to him before passing said order of recovery of the excess amount. Impugned order, which is totally cryptic and non-speaking cannot sustain in the eyes of law, especially, when the same causes prejudice to an employee, keeping in view the settled principle of law as noticed hereinbefore.

Even otherwise, no recovery can be done from a retired employee keeping in view the guidelines issued by the Hon'ble Supreme Court of India in ***State of Punjab & Others vs Rafiq Masih (White Washer) etc (2014) 8 SCC 883.*** Further, a recovery from an employee, who was working on a Class-III post is also impermissible. Relevant paragraph of the judgement is as under:-

> "It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
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> (i)Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (ii)Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (iii)Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

> (iv)Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
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> (v)In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

In the present writ petition, a recovery has been effected from the petitioner, who was working on a Class-III post, in pursuance to impugned order dated 20.07.2017 (Annexure P-1) passed after his retirement from his retiral benefits, which is contrary to the settled principle of law noticed hereinbefore and, therefore, impugned order dated 20.07.2017 (Annexure P/1) is set aside.

Respondents are directed to refund the amount so recovered from the petitioner in pursuance to impugned order dated 20.07.2017 (Annexure P-1) within a period of two months from the date of receipt of certified copy of this order.

(HARSIMRAN SINGH SETHI)
JUDGE

20.01.2020
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No