

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CWP-19249-2015

Date of Decision :03.08.2022

Charanjit and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. G.S. Bajwa, Advocate for the petitioners.

Mr. R.S. Budhwar, Addl. A.G. Haryana.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to order dated 25.07.2015 (Annexure P/6) passed by the respondents, by which, the petitioners were directed to deposit the amount, which was paid to them in terms of the order passed by this Court in writ petitions filed by the petitioners.

As per the facts mentioned in the present writ petition, the petitioners were working in Education Department, Haryana as Master, Drawing Teacher and Clerks. The adhoc relief, which was granted to the employees in the year 1989 was subsequently withdrawn by the respondent-department and excess amount paid was sought to be recovered, the said act of the respondents was challenged by the petitioners by way of filing the writ petitions by placing reliance upon the judgment given by this Court in

CWP-5563-A of 1989 titled as **Nitya Nand vs. State of Haryana**. The said plea of the petitioners was allowed and relief was granted to them in the same terms as extended in the case of **Nitya Nand's case (supra)**. Against the said judgment, SLP was preferred by the State, which came to be dismissed, after which, the petitioners were granted the benefits as being claimed by them in their respective writ petitions.

After the dismissal of the SLP filed in the case of the petitioners herein, the State had challenged the order passed in **Nitya Nand's case (supra)** before the Hon'ble Supreme Court of India and the said SLP was allowed and on the said basis, the relief granted to the petitioners was withdrawn by the respondents by passing impugned order dated 25.07.2015 (Annexure P/6) on the ground that the said amount is beyond their entitlement. The said order is under challenge in the present writ petition.

Learned counsel for the petitioners argues that on two accounts the impugned order dated 25.07.2015 (Annexure P/6) cannot be sustained in the eyes of law. First argument raised by the learned counsel for the petitioners is that no order of recovery can be passed against an employee without giving him/her an opportunity of hearing especially, when relief was extended in terms of the order passed by a competent Court of law, which order has already attained finality. Second argument is that once the benefit was extended to the petitioners under the order of the Court and the said order has already been upheld upto the Hon'ble Supreme Court of India, recovery of an excess amount cannot be made in view the judgment of Hon'ble Supreme Court of India in **Civil Appeal No.7115-2010** titled as

Thomas Daniel vs. State of Kerala and others, according to which, where there is no misrepresentation or fraud played by an employee while securing the relief, even if, subsequently the said employee is not found entitled for the said relief, the recovery of the said amount cannot be done.

After notice of motion, the respondents have filed reply, wherein, it has been stated that the claim of the petitioners is that they are entitled for the relief as being given in the case of **Nitya Nand's case (supra)**, which relief was granted to the petitioners. Once in **Nitya Nand's case (supra)**, the Hon'ble Supreme Court has held that relief extended by this Court was impermissible and SLP was allowed, the benefits extended to the petitioners in terms of the order passed in **Nitya Nand's case (supra)** needs to be withdrawn from the petitioners.

Learned counsel for the respondents submits that no show cause notice was required to be given to the petitioners, keeping in view the fact that after the judgment of the Hon'ble Supreme Court in **Nitya Nand's case (supra)**, no explanation could have been put forwarded by the petitioners to justify the retaining of the excess amount paid to them.

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

It is a settled principle of law settled by the Hon'ble Supreme Court of India in **Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprاندhak and another vs. Raghunath Singh Ranand others 2016(12) SCC 204** and **M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another 2019 (12) JT 283** that where any order passed by the authority concerned causes prejudice to an employee

especially, financial liability, an opportunity of hearing is must and no order causing prejudice to an employee can be passed by an employer unilaterally.

In the present petition, order of recovery dated 25.07.2015 (Annexure P/6) has been passed by the respondents without issuing any show cause notice to the petitioners. The averment made in para 14 (ii) of the present writ petition that no show cause notice was given to the petitioners by the respondents before passing an impugned order and the same has not been rebutted by the respondents. That being so, order dated 25.07.2015 (Annexure P/6) passed by the respondents cannot be sustained in the eyes of law.

Further, the petitioners retired from service since long and they were given benefits under the order of the Court, which order has already been upheld upto the Hon'ble Supreme Court of India.

Learned counsel for the petitioners submits that though, the actual benefit, which was extended to the petitioners have been withdrawn by the impugned order, the petitioners only restrict their claim with regard to the recovery of the excess amount paid to them by the respondents and are not raising their claim with regard to the withdrawal of the benefit, which has been done by the respondents keeping in view the order passed by the Hon'ble Supreme Court of India in **Nitya Nand's case (supra)**.

As the petitioners are not raising the grievance with regard to the withdrawal of the benefit, which was extended to them under the order of this Court, which has been withdrawn keeping in view the judgment of Hon'ble Supreme Court of India in **Nitya Nand's case (supra)**, no adjudication is required for on the said aspect. The only question which

remains before this Court is that as the petitioners have already retired from service by the date impugned order dated 25.07.2015 (Annexure P/6) was passed by which, the excess amount paid to the petitioners is sought to be recovered from them by the respondents is liable to be quashed or not.

As per the settled principle of law settled 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**, no recovery can be made from a retired employee. Relevant Paragraph 12 of the said judgement is as under:-

“12. 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:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(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.

(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 out weigh the equitable balance of the employer's right to recover.”

In the present case, the petitioners are retired employee and recovery has been done from them, which is impermissible as per the settled principle of law.

Keeping in view the above, order dated 25.07.2015 (Annexure

P/6), whereby, recovery of an excess amount paid to the petitioners was ordered by the respondents, is set aside being contrary to the settled principles of law.

The present writ petition stands allowed.

August 03, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No