IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(236) **CWP-23315-2018**
Date of Decision : September 23, 2022

Surjeet Singh **.. Petitioner**

Versus

State of Haryana and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. U.K. Agnihotri, Advocate, with
Ms. Anshul Agnihotri, Advocate, for the petitioner.

Mr. Sandeep Singh Mann, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the prayer of the petitioner is that after the retirement, a sum of Rs.1,41,724/- has been recovered from the petitioner on account of excess payment of HRA, which act of the respondents is totally arbitrary and illegal and the respondents are liable to refund the said amount to the petitioner along with interest.

As per the factual averments made, the petitioner, who was working as a District Manager in Haryana Woman Development Corporation and was posted at Ambala, was transferred and posted at the Head Office Panchkula as District Manager with the additional charge of the establishment for two days a week. As there was no post of District Manager at Panchkula, the pay of the petitioner was being drawn against the post of Project Officer which was available at Head Office for the reason that the petitioner was given the additional charge of the establishment as well. Petitioner continued working as a District Manager at Panchkula when vide order dated 13.06.2013, instead of the additional charge of the establishment, the petitioner was given the additional charge of the post of District Manager at Sirsa and Fatehabad for a period of one day each week. Thereafter, in order to streamline the payment of the salary of the petitioner, the respondents decided that starting from the date of passing of the order dated 08.08.2013, the pay of the petitioner will be drawn against the post of District Manager, Sirsa instead of Project Officer at the Head Office. Petitioner continued working as District Manager, Panchkula with the additional charge of District Manager, Sirsa and ultimately retired on attaining the age of superannuation on 31.05.2015.

After the retirement, the claim of the petitioner for the release of the pensionary benefits was considered and while computing the entitlement of the petitioner, the respondents deducted a sum of Rs.1,41,724/- on the ground that the petitioner was paid excess HRA than his entitlement, which needs to be recovered. The said order is under challenge in the present petition.

Learned counsel for the petitioner argues that in the present case, without actually going through the facts and circumstances of the case or without giving any opportunity of hearing to the petitioner, the recovery has been effected whereas, no recovery could have been done by the respondents as the petitioner remained posted at Panchkula only after his transfer effected on 23.10.2012 till his date of retirement and only the additional charge of the post of the District Manager was with the petitioner, hence, House Rent Allowance being paid to the petitioner as given to the employees posted at Panchkula was perfectly valid and legal and treating the petitioner posted at Sirsa for the purpose of computing the HRA is incorrect hence, the respondents are under an obligation to refund the recovery made from the pensionary benefits of the petitioner along with interest.

After notice of motion, the respondents have filed the reply wherein, they have stated that the salary of the petitioner was drawn against the post of District Manager, Sirsa after he was given the additional charge of the said post, hence, as only 10% HRA was admissible to the employees, who were posted at Sirsa and the petitioner was being given the HRA @ 20% while being posted at Panchkula, the excess amount was rightly recovered.

Learned counsel for the respondents has not been able to dispute the fact that the charge of the post of District Manager, Sirsa was an additional charge to be carried out by the petitioner and that too only once in a week whereas, the actual duties were being performed by the petitioner at Panchkula only as District Manager.

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

In the present case, the reason for effecting the recovery from the petitioner is that the petitioner was paid HRA @ 20%, which was only admissible to the employees posted at Panchkula whereas, the salary of the petitioner was being drawn from the post of District Manager, Sirsa, where only 10% of the basic pay is admissible to the employee as HRA, hence, recovery of the excess amount was done by the respondents. The said reason given for recovering the excess amount paid to the petitioner is not a valid reason.

Once, it is conceded that the petitioner was discharging the duties to the post of District Manager, Panchkula also till the date of retirement after being posted at Panchkula in October, 2012 and the duties of the post of District Manager, Sirsa was only the additional duty to be performed once in a week, treating the petitioner having been posted Sirsa for the purpose of HRA was totally incorrect and arbitrary.

The reduction of the HRA in case of the petitioner on the ground that the salary drawn by the petitioner is four the post of District Manager, Sirsa cannot be allowed in favour of the respondents especially when it is a conceded postion that the petitioner actually remained posted at Panchkula only where he was substantively posted, hence, the grant of HRA @ 10% instead of 20% is totally arbitrary and illegal and is quashed. Even otherwise, before effecting the recovery, no show cause notice was ever served upon the petitioner.

It is a settled principle of law that no order causing prejudice to an employee without giving any opportunity of hearing. The law on this issue is very clear keeping in view the judgment of the Hon'ble Supreme Court of India in ***M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another 2019 (12) JT 283, decided on 13.12.2019*** . The relevant para of the said 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 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, even otherwise, the recovery has been done from the petitioner after his retirement, which is impermissible keeping in view the judgment of 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,*** according to which, an employee who has one year to go before retirement or has already retired, no recovery can be made in case, there is no misrepresentation.The relevant paragraph of the said judgment 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 outweigh the equitable balance of the employer's right to recover."

In the present case, the claim of the petitioner is also covered by the judgment in ***Rafiq Masih's case (supra)***, hence, the recovery of Rs.1,41,724/- made from the petitioner at the time of his retirement, is totally arbitrary and illegal and the respondents are directed to refund the said amount within a period of one month from the receipt of copy of this order.

The present writ petition is allowed in above terms.

September 23, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No