

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(214)

CWP-9715-2016

Date of Decision : July 27, 2022

Sunita Sharma (deceased) through LRs

.. Petitioners

Versus

State of Haryana and others

.. Respondents

(214-3)

CWP-16467-2020

Sunita Sharma (deceased) through LRs

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jaspal Singh Maanipur, Advocate, for the petitioner
in CWP No.9715 of 2016.

Mr. R.S. Longia, Advocate, for the petitioner
in CWP No.16467 of 2020.

Mr. R.S. Budhwar, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, two writ petitions, the details of which have been given in the heading of the order, are being decided as both the petitions have been filed by the same petitioner challenging the separate action taken by the respondents, which is causing prejudice to her.

As per the facts mentioned in the petitions, the petitioner joined

as a Demonstrator in Commercial Stenography on adhoc basis on 17.10.1974. She continued working as such till her services were regularized on 01.01.1980 and thereafter, she was promoted as a Lecturer on 20.02.1991. On 14.06.1993, the petitioner was reverted from the post of Lecturer to that of Demonstrator on the ground that Haryana Public Service Commission has not granted approval to the promotion of the petitioner to the post of Lecturer hence, she cannot continue on the said post. Similar order was passed in the case of other similarly situated employees reverting them also. The order of reversion was challenged by the petitioner along with other similarly situated employees by filing **CWP No.7875 of 1993 titled as R.K. Midha and others versus State of Haryana and others**. Notice of motion was issued by this Court and reversion of the petitioner along with other similarly situated employees, was stayed. Thereafter, the writ petition was admitted and the interim order was ordered to continue.

The respondents filed an application in CWP No.7875 of 1993 wherein, they had stated that some of the petitioners in **R.K. Midha's case (supra)**, have already retired and some are going to retire hence, the present petition has been rendered infructuous and the same may be disposed of as such. Keeping in view the assertion of the respondent-State, the said writ petition was disposed of having been rendered infructuous on 22.10.2013.

After the said petition was rendered infructuous, the petitioner attained the age of superannuation on 30.11.2013 and retired. After the retirement, the claim of the petitioner was to be considered for the grant of pensionary benefits. Initially, the petitioner was granted the benefit as per the last pay drawn but after three years of the retirement, the respondents passed the impugned order that the petitioner was granted the benefit of

ACP in the cadre of Lecturer, which was not admissible to her keeping in view the fact that petitioner continued working on the said post on the basis of the interim order passed by this Court, though she was reverted by the Department. Without giving any opportunity of hearing to the petitioners, the respondents passed impugned order dated 10.03.2016 (Annexure P-10) withdrawing the benefit of Ist and 2nd ACP granted to the petitioners in the cadre of Lecturer. The challenge to the said order is in CWP No.9715 of 2016.

Keeping in view the fact that the respondents withdrew the benefit of ACP, the consequential order of re-fixation of salary and pension was passed by the respondents, which action of the respondents has been challenged in CWP No.16467 of 2020.

After notice of motion, the respondents have filed the reply wherein, the respondents have stated that the petitioner was reverted by the department from the post of Lecturer to that of Demonstrator by the order dated 14.06.1993 and as, the said order has not been set aside, the petitioner is not entitled to continue in the cadre of Lecturer so as to claim the benefit of ACP given to the petitioner while she was in service and her pay has been rightly revised by the department.

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

The facts of the present case show that the petitioner has been harassed by the respondents. Once the order of reversion dated 14.06.1993 (Annexure P-3) was stayed by this Court, it amounts that the same has been eclipsed till the final decision upon the petition or till the stay is vacated.

The writ petition was admitted and the interim order was ordered to

continue and as a matter of fact, also conceded by the learned counsel for the respondents, upto the date of retirement, the petitioner continued working as a Lecturer. It is further conceded position that prior to the retirement of the petitioner on 30.11.2013, the respondents themselves filed an application in CWP No.7875 of 1993 with a prayer that the petition be disposed of having been rendered infructuous and the said prayer of the respondent-Department was accepted by this Court and the petition was rendered infructuous. This means that the respondents presented before this Court they are not going to implement the order of reversion as some of the petitioners in CWP No.7875 of 1993 had retired and some were about to retire. That being so, withdrawing the grant of ACP from the petitioners on the ground that the order of reversion dated 14.06.1993 was not set aside by the Court, is an act beyond the jurisdiction of the respondents. Once the State pleaded before this Court in CWP No.7875 of 1993 that the said petition has been rendered infructuous, it means that reversion order was not to be implemented by the respondents.

On one hand, the respondents themselves projected before this Court that the petition filed by the petitioner, wherein her reversion was challenged and the same was stayed, has been rendered infructuous, on the other hand, when the said prayer of the respondents was accepted, , they violated their said stand by projecting that the petitioner is to be treated as reverted employee for all intents and purposes as reversion order was not set aside by the Court. Once, the respondents did not allow the Court to adjudicate the claim of the petitioner on merits and got the writ petition disposed of having been rendered infructuous, it has to mean that for all intents and purpose, according to the respondents, the order of reversion

does not exist and was not to be implemented. That being so, withdrawing the benefit of ACP given to the petitioner in the cadre of Lecturer, three years subsequent to the retirement of the petitioner on the ground that petitioner is to be treated to have retired from the post of Demonstrator, does not arise.

Even otherwise, any order which causes civil consequences to an employee or pensioner, has to be passed after giving due opportunity of hearing.

The Hon'ble Supreme Court of India in ***Civil Appeal No.9417 of 2019 titled as M/s. Daffodils Pharmaceuticals Limited and another vs. State of U.P and another, decided on 13.12.2019***, has held that no one can be inflicted with adverse order without being afforded a minimum opportunity of hearing. Relevant paragraph of the said judgment is reproduced 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.”

In the present case, learned counsel for the respondents

concedes that before passing the impugned order, as impugned in both the

petitions, no hearing was given to the petitioner. That being so, the orders withdrawing the benefits by the respondents already extended to the petitioner after retirement and thereafter revising the salary of the petitioner to her detriment, have been passed in contravention to the settled principle of law, noticed hereinbefore.

Keeping in view the above, impugned order dated 10.03.2016 (Annexure P-10) in CWP No.9175 of 2016 as well as impugned order dated 14.03.2017 (Annexure P-11) in CWP No.16467 of 2020 are quashed being contrary to the settled principle of law.

At this stage, learned counsel for the petitioner submits that though, the actual recovery was not done from the petitioner but the pensionary benefits of the petitioner, which the petitioner was entitled for as leave encashment was withheld by the respondents and the same was only released after a period of two years and three months of the retirement of the petitioner.

Learned counsel for the petitioner submits that the petitioner is entitled for interest on the said delayed release of the pensionary benefits.

Learned counsel for the respondents has not been able to justify as to what jurisdiction the respondents had to withhold those pensionary benefits.

Nothing has been brought to the notice of this Court that any disciplinary proceedings were pending against the petitioner, which gave jurisdiction to the respondents to withhold the pensionary benefits. Even the order of withdrawal of the ACP was passed in the year 2016 after three years of petitioner's retirement, hence, even the passing of the said order, cannot be treated as ground to withhold the leave encashment. That being

so, the delay in release of the leave encashment is attributable to the respondents only.

As per the judgment of the Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468***, the retiral benefits are to be computed and released within a period of two months from the date of the retirement, in case there is no impediment. The relevant paragraph of said judgment is as under:-

“Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement.”

Further, a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

“The jurisprudential basis for grant of interest is the fact

that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."

Resultantly, the prayer of the petitioner is allowed. Petitioner is held entitled for the interest @ 6% per annum on the delayed release of the leave encashment from the date the leave encashment became due till the release of the same.

Further, in case, after quashing of the impugned orders, the petitioner becomes entitled for the grant of any benefit in respect of revision of pension, the same will also be released to the legal heirs of the petitioner, as the case may be.

In case, the impugned order which have been set aside, have been implemented by the respondents in any way, the said action will be undone by the respondents within a period of two months. In case, any recovery has been made from the petitioner, the same will also be refunded back to the legal heirs of the petitioner within the above said period.

The writ petitions are allowed in above terms.

July 27, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes