

CM Nos.5297 to 5299-C of 2020 and
CM No.2677-C of 2021 in/and
RSA No.1616 of 2020 (O&M)

Neutral Citation No. 2023:PHHC:059193
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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

CM Nos.5297 to 5299-C of 2020 and
CM No.2677-C of 2021 in/and
RSA No.1616 of 2020 (O&M)
Date of Decision : 26.04.2023

Santosh Kumari

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surjeet Singh Sodhi, Advocate for the appellant.

Mr. S.S. Goripuria, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM No.5297-C of 2020

Application is allowed as prayed for.

CM No.5299-C of 2020

Application is allowed.

Documents are taken on record.

CM No.2677-C of 2021

Application is allowed.

Documents are taken on record.

CM No.5298-C of 2020 in/and
RSA No.1616 of 2020

The present Regular Second Appeal has been filed against the

which, the judgment and decree of the trial Court dated 18.04.2017, by which the suit filed by the appellant-plaintiff was allowed, has been set aside.

Learned counsel for the appellant submits that after the retirement, the retiral benefits for which the appellant-plaintiff was entitled for were not released due to which, the appellant-plaintiff had approached this Court claiming the retiral benefits and ultimately had to file a contempt petition for the grant of benefits concerned and it was only during the pendency of the contempt petition, the retiral benefits were released in favour of appellant-plaintiff but after the payment of the same, the recovery orders dated 05.06.2013 and 07.08.2013 impugned in the suit were passed, which were totally arbitrary and illegal.

Learned counsel for the appellant-plaintiff further submits that no recovery could have been made from the appellant-plaintiff especially when no show cause notice was given prior to the effecting of the recovery concerned, which act on the part of the respondent-department renders the order of recovery arbitrary and illegal and violative of the settled principle of law.

Learned counsel for the respondents, on the other hand, submits that in the present case, the recovery was done on the ground that while calculating the entitlement of the appellant-plaintiff certain benefits were counted and added twice and it was only due to clerical mistake, the appellant-plaintiff was paid more amount than her entitlement, which excess payment was rightly recovered.

Learned counsel for the respondents submits that once an undertaking was given by the appellant-plaintiff that in case any excess

payment is made to her, the same can be recovered, no show cause notice was required to be given.

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

It is a settled principle of law that in case any order imposes an employee with the penal consequence, such as recovery, same can only be done after giving due opportunity of hearing to the employee concerned. After considering any objection to the proposed action, appropriate order is required to be passed by the employer and then consequential action is to be taken.

In the present case, it has been conceded before this Court that no show cause notice was given before effecting the recovery from the appellant-plaintiff, which act itself renders the recovery illegal even if the same has been done on the basis of undertaking. The show cause notice was required to be given and, thereafter, after dealing with the objection, if any raised to the proposed action, appropriate order could have been passed by the respondents in the present case.

The judgments of the Courts below have been passed without considering the said aspect as to whether the impugned order of recovery can be passed without giving opportunity of hearing hence, in the facts and circumstances of the case, the judgment passed by the Courts below are perverse and cannot be sustained in the eyes of law and are accordingly set aside.

It has been conceded by learned counsel for the appellant that recovery has already been done. Impugned orders of recovery are set aside and suit is allowed. Department is given opportunity to pass fresh order in

accordance with law after giving due show cause notice to the appellant-plaintiff. The recovery of the amount already done will depend upon the fresh order to be passed by the respondents. In case, the respondent-department while passing fresh order comes to the conclusion that certain amount was paid in excess to the appellant, the recovery already done will stand satisfied and in case the department comes to the conclusion that no recovery of excess amount paid could have been done from the appellant, amount recovered will be refunded back to the appellant-plaintiff.

Let the department complete the process of issuance of show cause notice to the appellant-plaintiff and in case any reply is filed by the appellant, the same be considered and an appropriate order within a period of three months from the date of receipt of a copy of this order, be passed.

The Regular Second Appeal is allowed in the above terms.

April 26, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No