IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CWP No.27157 of 2019 (O&M)
Date of Decision : 08.08.2023

Rakesh Kumar **...Petitioner**

Versus

State of Haryana and others **...Respondents**

AND

CWP No.22748 of 2020

Gian Chand **...Petitioner**

Versus

State of Haryana and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjit Singh Ghuman, Advocate with
Mr. Chand Ram Narwal, Advocate
for the petitioner(s).

Mr. Pankaj Middha, Additional Advocate General, Haryana
for the respondents.

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Harsimran Singh Sethi J. (Oral)

By this order, two petitions, details of which have been given in the heading are being disposed of as the same involve the same questions of law on similar facts.

For the purpose of the present order, the facts are being taken from CWP No.27157 of 2019(O&M).

The challenge is to the order dated 29.08.2019 (Annexures P-6 and P-7) by which, the respondents directed the petitioner to deposit a sum of ₹2,72,240/-.

The petitioner, was working as a Cashier in the Transport Department. On 29.08.2019, an order was passed by the respondents directing the petitioner to deposit a sum of ₹2,72,240/- on the ground that as per the audit party, which had audited the records from 01.04.2017 to 31.03.2018, certain discrepancies have been found in the deposit of the tax collected and as per the objection of the audit party, tax amounting to ₹21,61,581/- was deposited less, which amount needs to be recovered from the cashier/employees, who were working at the Tax Collection Centre at that relevant time. Keeping in view the said audit report, the orders were passed against five employees holding them liable for the recovery and in the said order, the petitioner was found liable for his share so as to pay ₹2,72,240/-. Keeping in view the order Annexure P-6, on the same date, the petitioner was directed again to deposit the said amount within a period of three days.

The said order directing the recovery of the amount is under challenge in the present petitions.

Notice of motion was issued. The respondents have appeared. In the reply, the respondents have submitted that irregularities in the collection of the tax were found by the audit party and keeping in view the report of the audit, the petitioner was found liable to deposit his share amounting to ₹2,72,240/- hence, no grievance can be raised by the petitioner.

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 settled by the Hon'ble Supreme Court of India in Civil Appeal No. 2265 of 2011 titled as ***Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others,*** 2016(12) SCC 204, decided on 17.05.2016 and in Civil Appeal No. 9417 of 2019 titled as ***M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another*** 2019 (12) JT 283, decided on 13.12.2019 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 and the employee has to be given opportunity to defend himself/herself against any proposed action which causes prejudice to the said employee. The relevant paras of ***Daffodills Pharmaceuticals's case (supra)*** 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.*"

The relevant paragraph of the ***Chamoli's case (supra)*** 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."*

Now, the question which arises in the present petitions is whether, before passing the impugned order of recovery i.e. Annexure P-6, any opportunity was given to the petitioner to defend against the proposed recovery or not. From the record, it transpires that straightway the order of recovery was passed based upon the audit report without giving any opportunity of hearing to the petitioner to rebut or put his defence qua the said action of recovery. The procedure being adopted by the respondents is contrary to the settled principle of law noticed hereinbefore. The Rules of Natural Justice have been violated hence, the impugned order of recovery passed against the petitioner cannot be sustained.

At this stage, learned counsel for the respondents submits that once the order of recovery is being set aside on a technical ground of violation of Rules of Natural Justice, the department be given an opportunity to pass a fresh order in accordance with law.

The prayer of the respondents is valid as once, the order of recovery of this loss passed against the petitioner is not being adjudicated upon merits and the impugned order has been set aside only on the irregular procedure adopted for effecting the recovery of the loss, hence the respondents are entitled to pass fresh appropriate order after observing the principle of natural justice. The impugned order of recovery dated 29.08.2019 is set aside with the liberty to the respondents to pass a fresh order in accordance with law.

At this stage, the learned counsel appearing on behalf of the petitioner in CWP No.22748 of 2020 submits that the petitioner has already deposited the amount in terms of same notice dated 29.08.2019 which has already been quashed, hence the respondents be directed to refund the amount. In this regard, it is directed that in case the respondents initiate fresh proceedings, any amount deposited by petitioner Gian Chand, will be subject to the outcome of the fresh order to be passed by the respondents and in case, as per the fresh order to be passed, Gian Chand is again held liable, the amount already deposited will be utilized for the said purpose but if Gian Chand is held not liable for deposit of any amount, the amount so already recovered from him will be refunded back to Gian Chand within a period of four weeks from the date of passing of any such order.

The writ petitions are allowed in the above terms.

<u>CM No.19978 of 2022 in</u>
<u>CWP No.27157 of 2019</u>

As the main petitions stand disposed of, the application also stands disposed of.

August 08, 2023 **(HARSIMRAN SINGH SETHI)**
jt **JUDGE**

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