IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(106) **CM-5143-C-2023 in/and**
RSA-1776-2017
Date of Decision : 01.06.2023

Doaba Co-operative Milk Producers Union Limited
...Appellant

Versus

Gursharan Singh Saini and another
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Sehar Navjeet Singh Sandhu, Advocate for
Mr. Kannan Malik, Advocate for the appellant.

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Harsimran Singh Sethi J. (Oral)

CM-5143-C-2023

Present application has been filed for recalling the order dated 13.04.2023 (Annexure A-1), by which, the present appeal was dismissed for non-prosecution.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed. The order dated 13.04.2023 (Annexure A-1) is recalled and the appeal is restored to its original number and status.

RSA-1776-2017

1. The present regular second appeal has been filed challenging the judgments and decrees of the courts below dated 27.01.2015 and 10.11.2016, by which the suit filed by the contesting respondent-plaintiff-Gursharan Singh Saini, seeking the relief of retiral benefits along with the interest has been allowed.

2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.

3. Respondent-plaintiff was appointed as a Clerk/Time Keeper on temporary basis on 20.01.1981 with the appellant-defendant. Thereafter, his services were regularized as Clerk on 01.07.1982. On 01.03.1986, the respondent-plaintiff was promoted as Accounts Clerk and as Junior Accountant w.e.f. 02.03.1996 and ultimately, he retired from service on 30.11.2009.

4. It may be noticed that while releasing the pensionary benefits admissible to the respondent-plaintiff in respect of service rendered by him, a sum of ₹81,486/- was deducted on the account that the said amount has been received as a commission by the respondent-plaintiff from the Post Office on the deposit of the money, which is illegal and amounts to misconduct. The said recovery done from the retiral benefits was challenged by the respondent-plaintiff on the ground that the money has been paid by the Post Office to him and while he was in service, no proceeding was initiated against him by treating the said

action as a misconduct and even upto the date of recovery of the said amount from the retiral benefits, there was no specific order passed for the recovery of the said amount, hence, in the absence of any order seeking the recovery of the amount, no recovery from the retiral benefits could have been done by the appellant. The said contention of the respondent-plaintiff was accepted by the courts below keeping in view the evidence, which has come on record and a direction to the appellant-defendant was issued that the amount of ₹78,806/-, which has been deducted while releasing the pensionary benefits, be released to him along with interest.

5. Further, a sum of ₹78,806/- was deducted qua the payment of house rent for the period December, 2009 to October, 2010, which deduction has also been held to be bad by the courts below on the ground that the said deduction has been made without following the rules of natural justice and the same is impermissible. Hence, the present regular second appeal.

6. Learned counsel for the appellant argues that once certain amount for which the respondent-plaintiff was not entitled for, were released to him, the recovery of the same from the retiral benefits of the respondent-plaintiff could have been done by the department being the public money and the findings recorded by the courts below that in the absence of any order passed for the recovery of the amount received by

the respondent-plaintiff from the Post Office, cannot be recovered from his retiral benefits, are liable to be treated as perverse.

7. It may be noticed that it is a settled principle of law that in case any order of the employer visits the employee concerned with penal consequences, the rules of natural justice have to be adhered while passing such a punitive order. In the present case, the recovery of amount has been done from the pensionary benefits of the respondent-plaintiff and that too without passing so as to hold the respondent-plaintiff liable for the said recovery. Further, learned counsel for the appellant-defendant has not been able to rebut the fact that no opportunity to defend was extended before effecting the recovery from the pensionary benefit.

8. 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. The relevant para 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.*
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> *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."

9. Keeping in view the above cited principle of law, the action of recovery of amount from the respondent-plaintiff has rightly been held to be bad by the courts below.

10. Even otherwise, the said recoveries have been done after the retirement and 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 done from a retired employee, hence, even on the said account, the recoveries of the amount which were done from the pensionary benefits of the respondent-

plaintiff, cannot be upheld and have rightly been set-aside by the courts below. 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:-*
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> *(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."*

11. Learned counsel for the appellant-defendant raises an argument that as the action of the appellant-defendant in recovering the amount is being set-aside due to the violations of the principles of natural

justice, the appellant-defendant be given an opportunity to pass appropriate order after observing the rules of natural justice.

12. Though, in the normal circumstances, the said argument needs to be accepted but in the present case, it is a conceded position that the respondent-plaintiff has already retired from service since long, the said request will be too harsh to be accepted. Even otherwise, the post on which the respondent-plaintiff was working, is not pensionable and as per the settled principle of law, once the post is not pensionable and master and servant relationship has already ceased, even the pending disciplinary proceedings cannot continue, hence, keeping in view the facts and circumstances of this case, the liberty being sought by the learned counsel for the appellant-defendant cannot be extended.

13. No other point was raised.

14. Keeping in view the facts and evidence, which came on record, learned counsel for the appellant-defendant has not been able to prove that the findings recorded by the courts below are perverse so as to invite any interference by this Court.

15. Dismissed.

June 01, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

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