

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-27766 -2023 (O&M)

Decided on :19.12.2023

Randhir Singh

. .Petitioner

Versus

State of Haryana and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Anmol Jindal, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioner is that without giving any show cause notice to the petitioner, recovery has been ordered upon him vide order dated 03.02.2023, copy of which has been appended as Annexure P-3A.

2. Learned counsel for the petitioner submits that no recovery can be done from an employee without following the rules of natural justice especially issuing the show cause notice and an order of recovery of excess amount can only be passed after appreciating the reply of the officer concerned from whom the recovery of the excess amount is being proposed.

3. Learned counsel for the petitioner submits that keeping in view the facts and circumstances of the present case, the order dated 03.02.2023 (Annexure P-3A) has been passed without following the rules of natural justice.

4. Notice of motion.

5. Mr. Pankaj Middha, Additional Advocate General, Haryana, accepts notice on behalf of the respondents-State and submits that keeping in view the instructions received from the department no show cause notice has

been given to the petitioner but, the petitioner was paid beyond his entitlement which amount is sought to be recovered.

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

7. Though no reply has been filed but once the learned State counsel has conceded before this Court that the impugned order dated 03.02.2023 (Annexure P-3A) has been passed without issuing of show cause notice, the same cannot be sustained in the eyes of law and no recovery can be imposed upon the employee causing prejudice to him without observing the rules of natural justice.

8. It is also 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.

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 settled principle of law, the impugned order dated 03.02.2023 (Annexure P-3A) stands withdrawn and liberty is given to the respondents to pass a fresh order in accordance with law after following the rules of natural justice.

10 Disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

19.12.2023

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Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: Yes/~~No~~