



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(222)

CWP No. 923 of 2020
Date of Decision : 16.05.2024

Ashok Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Nagpal, Advocate for the petitioner.
Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the order dated 16.01.2017 (Annexure P-9) as well as order dated 18.07.2019 (Annexure P-12) by which the petitioner has been asked to deposit a sum of ₹3,37,722/- on the ground that the said payment has been made to him in excess of his entitlement.
2. Learned counsel for the petitioner argues that the impugned orders dated 16.01.2017 (Annexure P-9) and dated 18.07.2019 (Annexure P-12) are bad and have been passed without giving any opportunity of hearing and also by ignoring 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, according to which, no recovery can be done from a retired employee.

3. Learned counsel for the petitioner argues that the petitioner retired from service on 31.12.2011. After a period of six years of the retirement, respondents issued a letter on 16.01.2017, copy of which has been appended as Annexure P-9 that the petitioner has been given more salary than his entitlement and according to the respondents, a sum of ₹3,37,722/- has been paid beyond the entitlement of the petitioner, which should be deposited back and similar letter was again written on 18.07.2019, copy of which has been appended as Annexure P-12 and feeling aggrieved qua the said demand, the present petition has been filed on the ground that the intention of the respondents to recover the said amount is not in accordance with the settled principle of law.

4. Learned counsel for the respondents concedes the factum that the petitioner has retired on 31.12.2011. Learned counsel for the respondents submits that the petitioner was paid excess amount than his entitlement but concedes the factum that before passing the impugned orders, no show cause notice was given to the petitioner.

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

6. It is a settled principle of law that no order causing prejudice to any employee can be passed without following the rules of natural justice. The law in this aspect is very much clear keeping in view the



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.”

7. 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.”

8. In the present case, it is a conceded fact that the recovery was being ordered from the petitioner after six years of his retirement and that



too without giving him any show cause notice, which is impermissible as per the settled principles of law notice here-in-before.

9. Even otherwise, as per the judgment in ***Rafiq Masih's case (supra)***, no recovery can be done from a retired employee or in a case where benefit which an employee continued to get for a period of five years before the same was withdrawn. 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:-

- (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.”

10. In the present case, it is conceded fact that petitioner retired in December, 2011, whereas the order of recovery was passed in the year 2017/2019 i.e. after more than six to eight years of retirement.

11. Keeping in view the facts mentioned here-in-before, the recovery being done from the petitioner is impermissible and is contrary to the settled principle of law noticed here-in-before as the amount was not paid on the basis of any misrepresentation on behalf of the petitioner but the same was given by the respondents themselves while the petitioner was in service, hence, the impugned orders dated 16.01.2017 (Annexure P-9) and dated 18.07.2019 (Annexure P-12) are contrary to the settled principle of law and cannot be sustained in the eyes of law and are hereby quashed.

12. Petition is allowed in above terms.

May 16, 2024

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No