**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(233) **CWP No. 3701 of 2021 (O&M)**
Date of Decision : 30.07.2024

Karamjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. C.L. Sharma, Advocate for the petitioner.

Mr. Swapan Shorey, Deputy Advocate General, Punjab.

***

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the orders dated 16.09.2019 (Annexure P-2) and dated 28.09.2020 (Annexure P-7) passed by the respondents by which, the increments which were granted to the petitioner in the year 1996 and 2001 have been withdrawn after a period of 23 years and that too after the petitioner had attained the age of superannuation on 21.11.2019.

2. As per the petitioner, while fixing the pay of the petitioner w.e.f. 01.01.1996, his basic pay was fixed as ₹4700/-. Petitioner continued to get the same till the same was revised in the year 2011. The petitioner attained the age of superannuation on 31.03.2019. Thereafter, by the impugned order dated 16.09.2019 (Annexure P-2), the respondents while considering the case of the petitioner for computing the pensionary benefits, found that the pay of the petitioner as on 01.01.1996 should have been ₹4550/- and not ₹4700/-,

unilaterally reduced the same and directed the recovery of the excess amount, which orders of reducing the pay and recovering the excess amount paid, are under challenge in the present petition.

3. Learned counsel for the respondents submits that as the pay of the petitioner was wrongly fixed, while computing his pensionary benefits the said discrepancy came to the notice and, therefore, the order reducing the pay was passed along with the recovery of excess amount order, hence the writ petition is liable to be dismissed.

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

5. The pay of the petitioner was fixed by the respondents themselves. There was no influence by the petitioner at any given point of time for fixing his basic salary at ₹4700/-. Further, the petitioner attained the age of superannuation on 31.03.2019. After the employee attains the age of superannuation, there is no Master and Servant relationship, hence, once there is no Master and Servant relationship, the pay of the petitioner could not have been reduced and that too retrospectively.

6. Even otherwise, any pay fixed more than two decades ago cannot be unilaterally changed to the detriment of an employee. Unless and until there is a Rule authorizing the Government to pass such kind of an order to change the emoluments of an employee after he/she attained the age of superannuation, no such order can be passed. Even the disciplinary proceedings can only be initiated after retirement keeping in view the condition laid down in the Rules governing the service, hence, unilaterally changing the pay of the petitioner retrospectively from the year 1996, is

without jurisdiction keeping in view the facts and circumstances of the present case narrated here-in-before.

7. Further, even while reducing the salary, no show cause notice was given to the petitioner to seek explanation. 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.*

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."

8. 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. On this ground also, the impugned order dated 16.09.2019 (Annexure P-2) reducing the salary w.e.f. 01.01.1996 is arbitrary and illegal.

10. At this stage, learned counsel for the petitioner submits that the pensionary benefits of the petitioner have been stopped for the last five years on the basis of the reduction of pay. No justifiable reason has come as to why the pensionary benefits have not been released to the petitioner despite the settled principle of law settled by the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468,** that the pensionary benefits of an employee are to be released within a period of two months in case, there is no impediment.

11. In the present case, there is no impediment in the release of the pensionary benefits but still, for the last five years, the petitioner is waiting for his pensionary benefits. Apart from this, a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

> *"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

12. Keeping in view the above, the impugned order dated 16.09.2019 (Annexure P-2) and order dated 28.09.2020 (Annexure P-7) are

set-aside. The respondents are directed to grant the petitioner the benefit of salary which he was drawing prior to the passing of the impugned orders and the said salary be taken into account for computing his pensionary benefits. The respondents are further directed to release all the pensionary benefits/arrears of the petitioner keeping in view the order passed here-in-before along with interest @ 6% per annum from the date the petitioner retired till the actual release of the payment. Let the said order be complied with within a period of eight weeks of the receipt of copy of this order.

13. Present petition is allowed in above terms.

14. Pending miscellaneous application, if any, also stands disposed of.

July 30, 2024 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No