IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(328) **CWP No. 14613 of 2020 (O&M)**
Date of Decision : 25.11.2024

Irvinder Pal Singh Jodhka

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Sunaina, Advocate for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

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Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance of the petitioner is that after the retirement of the petitioner, the respondents revised the salary of the petitioner with retrospective effect from the year 2000 so as to reduce his salary and to make recovery of the alleged excess amount paid to the petitioner.

2. Learned counsel for the petitioner argues that the petitioner, who was serving the respondents, retired on attaining the age of superannuation on 31.03.2020. After the retirement, the respondents vide order dated 07.07.2020 (Annexure P-1) re-fixed the salary of the petitioner from 01.01.2006 onward till the date of his retirement and caused prejudice to him not only by reducing his salary retrospectively but also to make recovery of the excess amount to be paid vide order dated 24.08.2020 (Annexure P-6).

3. Upon notice of motion, the respondents filed the reply. Learned counsel for the respondents submits that in the present case, after the retirement of the petitioner, the fixation of his salary was looked into and as it was found that certain benefits that were not admissible to the petitioner were given to him since the year 2006, hence, his salary has been re-fixed and the excess amount has been directed to be recovered which is perfectly valid and legal, especially keeping in view the undertaking which the petitioner had given for recovery of any excess amount paid by the Department to him, copy of which has been appended as Annexure R2.

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

5. In the present petition, the grievance of the petitioner is that after retirement, his pay has been re-fixed and that too without giving any opportunity of hearing to him. The further prayer is that keeping in view 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 made from the retired employee, hence, the order of re-fixation of salary and recovery of alleged excess amount being done from the petitioner is arbitrary and illegal.

6. The impugned order dated 07.07.2020 (Annexure P-1) would show that the pay of the petitioner is being re-fixed starting from 01.01.2006. The said order is being passed after a period of 14 years.

7. As per the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra),*** no recovery can be done from a retired employee, especially when the benefits sought to be withdrawn, were

allowed in favour of the retired employee for a period in excess of five years before the order of recovery is issued. The relevant paragraph 12 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."*

8. In the present case, on the date when impugned orders dated 07.07.2020 (Annexure P-1) and 24.08.2020 (Annexure P-6) were passed, the petitioner had already retired and the benefit was extended to the petitioner in the year 2006 which was sought to be withdrawn in the year 2020. Learned counsel for the respondents has not been able to dispute the said fact. Once, the claim of the petitioner is covered under the judgment in ***Rafiq Masih's case (supra),*** no recovery of amount can be done.

9. At this stage, learned counsel for the respondents submits that keeping in view the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 3500 of 2006 titled as ***High Court of Punjab & Haryana and others Vs. Jagdev Singh***, decided on 29.07.2016, according to which, where an undertaking has been given, the same has to be complied with and the judgment in ***Rafiq Masih's case (supra)*** should not be brought into operation. Qua the above argument of respondents, it can be observed that the undertaking, a copy of which has been appended as Annexure R-2, does not bear a date. Nothing has come on record that the same was taken from the petitioner at the time when the benefit was given to him in the year 2006. As per the respondents, the said undertaking was taken for furnishing the pensionary benefits. Once, even from the vernacular, there is no date in the undertaking and the said undertaking is cyclostyle, the benefit of such undertaking cannot be given to the respondent-State as they failed to establish beyond doubt that the said undertaking was given by the petitioner at the time of receiving of the benefit in the year 2006.

10. Apart from this, even otherwise, the impugned orders dated 07.07.2020 (Annexure P-1) and 24.08.2020 (Annexure P-6) cannot be sustained in the eyes of law. As per the settled principle of law in case, any order causing prejudice to an employee is passed, the principles of natural justice have to be followed. In the present case, it is a conceded position that

before passing the order dated 07.07.2020 (Annexure P-1) regarding re-fixing the salary of the petitioner and order dated 24.08.2020 (Annexure P-6) regarding recovery of excess amount of ₹4,65,684/- from the petitioner, no notice was given to the petitioner. In the absence of any notice, the impugned orders dated 07.07.2020 (Annexure P-1) and 24.08.2020 (Annexure P-6) cannot be sustained keeping in view the judgment of 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 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. 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."

11. Keeping in view the above, as the impugned orders dated 07.07.2020 (Annexure P-1) and 24.08.2020 (Annexure P-6) have been passed contrary to the settled principle of law on more than one account, impugned orders dated 07.07.2020 (Annexure P-1) and 24.08.2020 (Annexure P-6) are set-aside. The respondents are directed to calculate the pensionary benefits of the petitioner on the last drawn pay, which was actually drawn by the petitioner at the time of his retirement and whatever benefit which the petitioner is found entitled for on the basis of the said last pay drawn, be extended to the petitioner in case, his pensionary benefits get enhanced as compared to one already extended to the petitioner on the basis of impugned order dated 07.07.2020 (Annexure P-1).

12. As, the respondents have unilaterally reduced the salary of the petitioner which is contrary to the settled principle of law, on the arrears, if any, admissible to the petitioner, the petitioner will also be entitled for interest @ 6% per annum from the date the petitioner retired till the actual payment of the same. Any recovery done from the petitioner, will also be refunded back as the impugned orders dated 07.07.2020 (Annexure P-1) and 24.08.2020 (Annexure P-6) have already been set-aside and in case petitioner is entitled for any refund, the petitioner will also be entitled for interest @ 6% per annum on the same from the date the recovery was done till the actual release of the payment.

13. Let the order be complied with within a period of two months of the receipt of copy of this order.

14. Writ petition is allowed in above terms.

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

November 25, 2024 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes