2024.PHHC.116411

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

232 **CWP-11637-2018 (O&M)**
Date of Decision: 04.09.2024

Jasbir Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Kaith, Advocate
for the petitioner.

Mr. Satnampreet Singh, AAG, Punjab.

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HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, the grievance being raised by the petitioner is that a sum of Rs. 3,08,923/- has been recovered from the gratuity of the petitioner by the respondent-department by refixing his salary.

2. Learned counsel for the petitioner submits that the petitioner was serving as a Driver with the respondent department and ultimately retired from service on attaining the age of superannuation on 30.04.2016 after availing extension for a period of two years.

3. Learned counsel for the petitioner submits further that after the retirement of the petitioner, the respondents vide order dated 27.07.2016, have refixed the pay of the petitioner w.e.f. 1993, which act on the part of the respondent is arbitrary and illegal.

4. Learned counsel for the petitioner submits that not only this, on the basis of the revision of his salary, the respondents have passed an order for the recovery of Rs. 3,08,923/-, which amount has been recovered from the gratuity

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admissible to the petitioner. Learned counsel for the petitioner further submits that both the orders refixing salary as well as the order of recovery have been issued without giving any show cause notice to the petitioner which act on the part of the respondents is arbitrary and illegal.

5. Learned counsel for the petitioner submits that though in the petition, the petitioner has challenged both the orders i.e. re-fixation as well as the recovery, but the petitioner is only pressing the order by which the recovery of Rs. 3,08,923/- has been ordered and recovered from the gratuity.

6. Upon notice of motion, the respondents have filed reply, wherein the respondents have stated that once, the petitioner was wrongly getting salary over and above his entitlement, the same has been refixed and the recovery has been done as, the petitioner was not entitled to receive the amount beyond his entitlement.

7. Learned counsel for the respondent has not been able to rebutt the fact that the impugned order of re-fixation of pay as well as the order of recovery have been passed without giving any opportunity of hearing to the petitioner.

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

9. It may be noticed that the law on the question whether a unilateral order without following rules of natural justice can be passed by an employer, so as to cause prejudice to an employee, is well settled.

10. 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***

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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.*

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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. A bare perusal of the above settled principle of law would show that wherever an action is to be taken against an employee, the same can only be taken after following rules of natural justice and in case of failure, the said order cannot be sustained in the eyes of law.

12. Keeping in view the above settled principle of law, no order could have been passed which causes prejudice to an employee without affording an opportunity of hearing, and in the present case, the re-fixation was done qua the pay of the petitioner and recovery has been ordered without grant of any hearing to the petitioner and that too after the retirement, which is totally impermissible.

13. Further, as per the judgment of the Hon'ble Supreme Court of India in ***State of Punjab vs. Rafiq Masih (white washer) and others, AIR 2015 SC 696*** no recovery can be done from a retired employee, after withdrawing a benefit which was availed for a period of five years. The relevant paragraph 12 of the said judgment in Rafiq Masih (supra) 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

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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."

14. In the present case, the benefit sought to be withdrawn from the petitioner relates back to the year 1993 and the said benefit was being withdrawn in the year 2016 i.e. after availing the same for more than 5 years and further on the date when the refixation was done and the recovery was ordered, the petitioner has already retired from service, hence, no recovery could have been done from the petitioner even after the refixation of his salary.

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15. Keeping in view the above, the recovery done from the pensionary benefits of the petitioner is totally arbitrary and illegal and contrary to the settled principle of law as noticed hereinabove and cannot be sustained and is accordingly set aside.

16. Once, the recovery was impermissible as the same was done in a manner contrary to the settled principle of law, the petitioner will also be entitled for interest on the said recovered amount keeping in view the judgment of the Coordinate Bench in **CWP-15861-2001** titled as **"J.S. Cheema Vs. State of Haryana"** decided on 20.11.2013, wherein it has been held that when an amount belonging to employee has been retained and used by the department, the employee becomes entitled for interest. The relevant paragraphs of the said judgment is as under :-

> *"5.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 laying 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."*

17. Keeping in view the above, the respondents are directed to refund the petitioner a sum of Rs. 3,08,923/- along with interest @ 6% per annum from the date the petitioner retired till the actual of the repayment of the same. Let the order be complied with within a period of eight weeks from the date of receipt of certified copy of this order.

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18. The writ petition is allowed of in the above terms.

19. Pending application, if any, stands disposed of.

04.09.2024 **(HARSIMRAN SINGH SETHI)**
Satyawan **JUDGE**

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

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