

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

(218)

CWP-12519-2018

Date of Decision : May 06, 2024

Rajender Singh**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Manoj Chahal, Advocate, for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that vide order dated 13.04.2018 (Annexure P-5), without giving an opportunity of hearing to the petitioner, the pay of the petitioner has been re-fixed and the order dated 25.04.2018 (Annexure P-6) has been issued for recovery of the excess amount.

2. Learned counsel for the petitioner argues that the petitioner's pay was fixed in accordance with law which pay, the petitioner continued to receive but without giving any opportunity of hearing, the impugned order has been passed on 13.04.2018 (Annexure P-5) so as to re-fix the salary of the petitioner and subsequent order dated 25.04.2018 imposing recovery. Learned counsel for the petitioner submits that any action causing prejudice to an employee, cannot be passed without giving an opportunity of hearing

to the concerned employee especially when the same relates to the recovery of the alleged excess amount.

3. Learned counsel for the respondents submits that the salary of the petitioner was fixed on the ground that while working on contract/daily wage/adhoc, the petitioner was entitled for minimum of the regular pay scale and he was also given the increment, which was not admissible hence, the said increment has been withdrawn and pay of the petitioner has been re-fixed so as to recover the excess amount already paid.

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

5. It is a conceded fact that there was no misrepresentation on part of the petitioner so as to get the increment which the respondents gave the petitioner unilaterally. Even if, the respondents were of the view that the increment has wrongly been extended to the petitioner, the same could only be withdrawn if permissible under law after giving due opportunity to the petitioner to object to the said action of the Department.

6. 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.”

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.”

7. In the present case, it is a conceded position that the pay of the petitioner has wrongly been re-fixed by withdrawing the increment, which could not have been done without giving due opportunity of hearing.

8. Even otherwise, as per the judgment of 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 could have been done from class III or class IV employee. Concededly, the petitioner is working as a Conductor which is a class III post hence, as per the findings recorded by the Hon’ble Supreme Court of India in paragraph 12 of ***Rafiq Masih’s case (supra)***, no recovery can be done. The relevant paragraph of the said judgment in ***Rafiq Masih's case (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 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.”

9. Had a show cause notice been given to the petitioner before withdrawing the benefit of increment or directing recovery, the petitioner could have mentioned all these facts, which could have been taken into consideration by the respondents before passing the impugned order.

10. As the impugned order dated 13.04.2018 (Annexure P-5) has been passed by violating the rules of natural justice, the same is set aside. The respondents will be free to pass appropriate order after giving due opportunity of hearing to the petitioner and keeping in mind the settled principle of law settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***.

11. The present writ petition is allowed in above terms.

May 06, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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