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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 07.08.2024

1. CWP- 25576-2017 (O&M)

GURPREET SINGH
..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.
.....RESPONDENTS
2. CWP- 25577-2017 (O&M)

AVTAR SINGH
..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.
.....RESPONDENTS
3. CWP- 25578-2017 (O&M)

NARESH KUMAR
..... PETITIONER

VERSUS



CWP- 25576-2017(O&M) and connected cases

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STATE OF PUNJAB ETC.

.....RESPONDENTS

4.

CWP- 25579-2017 (O&M)

KULDEEP SINGH

..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.

.....RESPONDENTS

5.

CWP- 25580-2017 (O&M)

KAMAL KUMAR

..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.

.....RESPONDENTS

6.

CWP- 25581-2017 (O&M)

MOHINDER PAL

..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.

.....RESPONDENTS

7.

CWP- 25582-2017 (O&M)



CWP- 25576-2017(O&M) and connected cases

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VEER SINGH

..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.

.....RESPONDENTS

8.

CWP- 25583-2017 (O&M)

ANTPAL SINGH

..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.

.....RESPONDENTS

9.

CWP- 25584-2017 (O&M)

DALJIT SINGH

..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.

.....RESPONDENTS

10.

CWP- 25585-2017 (O&M)

SUKHJINDER SINGH

..... PETITIONER

VERSUS



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STATE OF PUNJAB ETC.

.....RESPONDENTS

11.

CWP- 25586-2017 (O&M)

DALJEET SINGH

..... PETITIONER

VERSUS

STATE OF PUNJAB ETC.

.....RESPONDENTS

CORAM: HON'BLE MR JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjivan Singh, Advocate and
Mr. Risham Raag Singh, Advocate
for the petitioner(s).

Mr. Charan Preet Singh, AAG, Punjab.

Harsimran Singh Sethi J. (Oral)

By this common order, eleven writ petitions, the details of which have been given in the heading of the order, are being disposed of, as all the petitions involve the same question of law based on similar facts.

The grievance being raised by the petitioners in the present bunch of petitions is that while working with the respondent-department as the petitioners had completed 4 years' service in a particular cadre, they

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were granted the benefit of ACP and were given a higher pay scale (ACP) which benefit was being drawn by them till the passing of the impugned order dated 26.05.2017 (Annexure P-7) by which, the respondents unilaterally decided that instead of a higher pay-scale, the petitioners were entitled for only one increment.

Learned counsel for the petitioners argues that once, a particular benefit was already extended to the petitioners and the petitioners were availing the same, there cannot be a unilateral withdrawal of the said benefit without giving any opportunity of hearing to the concerned employees as, withdrawal of financial benefit causes prejudice to an employee and in the present case, not only the benefit of a higher pay scale was withdrawn, but even the recovery of the excess amount paid was also being done by the respondent-State. Hence, the order dated 26.05.2017 is violative of rules/principles of natural justice and cannot be sustained in the eyes of law.

Learned State Counsel submits that the order dated 26.05.2017 has been passed keeping in view the audit objections raised by the Audit Department wherein, it had been mentioned that keeping in view the advice of the Finance Section, the benefit of higher pay scale was wrongly given to the petitioners and as the petitioners had already given an undertaking at the time of receiving the said benefit that in case the same is found to be incorrect, the same can be withdrawn along with the excess amount paid, hence, no grievance can be raised by the petitioners qua the

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order dated 26.05.2017 that no show cause notice was given to them before passing the impugned order.

I have heard learned counsels for the parties and have gone through the record with their assistance.

It is settled principle of law that once, a particular benefit has been extended to an employee by the Department, the same can only be withdrawn by following the rules of natural justice. By following the rules of natural justice, the employee gets a right to object to the proposal of the State so as to put forward his/her defence qua the action proposed and such defence taken, has to be taken into consideration by the State before passing the order on such issue.

Further, it has already been 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.”

Keeping in view the above, any order passed by the State without following the rules of natural justice or giving an opportunity of hearing to the employee concerned, which order causes prejudice to the employee, the same cannot be sustained in the eyes of law.

In the present case, the impugned order 26.05.2017 has been passed without giving any opportunity of hearing to the petitioners, hence, the same cannot be sustained and is accordingly set aside.

At this stage, State Counsel submits that the State be given liberty to pass a fresh order on the issue after giving due notice to the petitioner and whatever the defence will be taken by the petitioners in reply to the said show cause notice, the same shall be dealt with and appropriate order will be passed as required keeping in view the facts and circumstances of the case.



As the present issue is not being decided not on merits, the respondents are given liberty to issue a show cause notice to the petitioners in case they are still of the view that the benefit extended to them was beyond their entitlement and whatever reply is filed by the petitioners to the said show cause notice, the same be dealt with while passing appropriate speaking order. As the recovery qua the excess amount paid has already been stayed by the Court, no recovery will be done in pursuance to the impugned order already set aside. With regard to the recovery proceedings, the respondents will also pass appropriate orders keeping in view the settled principle of law on the issue concerned.

Keeping in view the above, the impugned orders withdrawing the pay-scale and consequent recovery of the excess amount in all the petitions are set aside, with liberty to the State to proceed afresh in accordance with law.

The present writ petitions are allowed in above terms.

A photocopy of this order be placed on the files of other connected case(s).

August 07, 2024
Seema

(HARSIMRAN SINGH SETHI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>