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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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RSA-165-2015  
Date of decision:23.07.2024

SHANKAR LAL SAHARAWAT (DECEASED) THR. HIS LRS  
...APPELLANT

VERSUS

STATE OF HARYANA  
...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Deep Inder Singh Walia, Advocate for the appellant.  
Mr. Aman Bahri, Addl. A.G., Haryana.  
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SUVIR SEHGAL, J.

1. Defendant-appellant is in second appeal before this Court challenging the concurrent finding recorded by the Courts below.
2. Facts, in brief, leading to the filing of the appeal, are that the plaintiff-respondent filed a suit for recovery of Rs.1,62,269/- against the defendant-appellant, who retired from the Haryana Civil Service (Executive Branch) on 31.12.1992. It has been averred that the defendant was posted as a General Manager, Haryana Roadways, when he passed an order dated 20.12.1991, Ex.P-2, retrenching Raj Pal from service. Raj Pal challenged the order by invoking the provisions of the Industrial Disputes Act, 1947, and the Labour Court vide award dated 05.11.1998, Ex.P-3, declared order, Ex.P-2, as void and held that Raj Pal was entitled to reinstatement with continuity of service and back wages. The Labour Court ordered that at the

first instance, the arrears of salary be paid to Raj Pal by the Haryana

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Roadways and recovery be effected from its General Manager, who had passed the termination order. After satisfying the award and making the payment to Raj Pal, the plaintiff, issued a notice dated 24.01.2005, Ex.P-4, to the defendant directing him to deposit the amount within a period of 15 days. On his failure to do so, the suit for recovery as mentioned above was instituted.

3. Upon being served, defendant contested the suit by taking various pleas. A stand was taken that the suit has been filed after three years of passing of the order, Ex.P-4, and is clearly barred as no recovery can be effected from a retired officer without complying with the service regulations. A stand was taken by the defendant that the order could not have been passed without affording an opportunity of hearing. Issues were framed on the basis of the pleadings of the parties. Plaintiff examined Parkash Chand as PW-1, besides producing documents, Ex.P-1 to P-4. Defendant stepped into the witness box as his own witness, DW-1, and produced documents, Ex.D-1 to D-6, in his evidence. After the parties were heard, the Trial Court by judgment dated 30.11.2012, decreed the suit. Defendant remained unsuccessful in the first appeal, which was rejected by the learned District Judge, Jind, by judgment dated 05.07.2014 leading to the institution of the present appeal.

4. I have heard counsel for the parties and considered their rival contentions besides examining the record with their able assistance.

5. It is apposite to notice and reproduced hereunder the recovery order, Ex.P-4, passed by the defendants:

*“From  
General Manager*



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*Haryana Roadways, Jind*  
 To  
*Sh. Shanker Lal Saharawat*  
*Retd.HCS*  
*House No.34/27,*  
*Sonipat Road, Near Sheela Bye Pass*  
*Rohtak*

*Memo No.748 IEA/EeM*  
*Dated:24.1.05*  
*Sub: Notice for the recovery of Rs.1,62,269/-*

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*Vide Order dated 5.11.98 passed by Sh. B.S. Sharma the Presiding Officer, Industrial Tribunal-cum-Labour Court Panipat held that the arrears of salary/wages shall be paid by the Haryana Roadways Jind Depot but since the management should not suffer on account of any arbitrary act of its manager so it shall be at liberty to recover the entire amount from the then General Manager who passed the impugned order.*

*2. In compliance of the above order Rs.1,62,269/- have been paid to the employee (Workman) Sh. Raj Pal s/o Sh. Inder Singh Helper daily wages.*

*3. That the payment of Rs.1,62,269/- have been made on account of your arbitrary act.*

*4. As per order dated 5.11.1998 (enclsd.) under signed is entitled to recover the entire amount paid to workman i.e. Rs.1,62,269/-.*

*So you are directed to deposit the amount in question in the office of undersigned within Fifteen days failure to which legal action be taken against you as per law.*

*General Manager*  
*Haryana Roadways, Jind”*

6. A cursory look at the above order shows that the defendant has been called upon to deposit an amount of Rs.1,62,269/- without any prior notice nor any opportunity of hearing has been afforded to him before passing the order. In his cross-examination, Parkash Chand, PW-1, has categorically admitted that before serving Ex.P-4, no action-oriented notice was given to the defendant. Not only this, plaintiff has even failed to lead any evidence to establish that the recovery order, Ex.P-4, was served upon the defendant. No postal receipt or any other document was produced to

show its dispatch and service upon the defendant. The recovery order,



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Ex.P-4, entails adverse monetary consequences and it could not have been passed without affording the defendant with an opportunity to explain or represent. Failure to provide any opportunity to the defendant has resulted in the infraction of the principles of natural justice.

7. In *Daffodills Pharmaceuticals Ltd. and antoher Vs. The State of Uttar Pradesh and another (2020) 18 SCC 550*, Supreme Court has held that no one can be inflicted with an adverse order without being afforded a minimum opportunity of hearing and prior intimation of such move. It has been observed that this principle is well entrenched in the legal ethos of this country to be ignored as the State did in this case. In *Meena Kumari Versus State of Haryana and others 2023 (3) PLR 632*, a Co-ordinate Bench of this Court has held that as no show cause notice was issued nor any enquiry was held into the allegation levelled against an employee, he cannot be held guilty of the allegation of fault or misconduct and recovery cannot be imposed upon him. Both the Courts below, however, failed to notice that the recovery order, Ex.P-4, has been issued by the plaintiff-respondent in breach of the principles of natural justice. Therefore, findings to the contrary recorded by the Courts below are liable to be reversed.

8. For the afore-going reasons, appeal is allowed. Judgments and decrees passed by the Courts below are set aside and the suit filed by the plaintiff-respondent is dismissed with no order as to costs.

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

23.07.2024

sheetal

(SUVIR SEHGAL)

JUDGE

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |