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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 12.11.2024

Sarup Chand

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. R.S. Dadwal, Advocate
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

Mr. S.S. Brar, Advocate
for respondents No.2 and 3.Mr. Vikas Chatrath, Advocate
for respondents No.4 to 6.

NAMIT KUMAR, J (ORAL)

1. The petitioner has filed the instant petition impugning the action of the respondents whereby demand has been raised from the petitioner for recovering an amount of Rs.1,35,118/- on account of alleged excess payment of pension for the period from January 2006 to July 2020.

2. Learned counsel for the petitioner submits that although the demand notice dated 23.07.2020 (Annexure P-2) was issued to the petitioner seeking recovery of Rs.1,35,118/- and the petitioner was given an opportunity to submit response within 15 days from the date of receipt of the said demand notice, to which the petitioner submitted reply dated

17.08.2020 (Annexure P-3), but, however, without passing any specific



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order of recovery, and by completing the necessary formalities and adhering to the principles of natural justice, and grant of opportunity of personal hearing, the bank had started recovery of Rs.4210/- per month from 27.08.2020.

3. Per contra, learned counsel for the respondents-bank submits that after receipt of representation of the petitioner, order dated 15.09.2020 (Annexure R-5/4) was passed. He could not refute the fact that no opportunity of personal hearing was afforded to the petitioner while passing the order dated 15.09.2020 and the bank started recovery even before passing of the order dated 15.09.2020. In such situation, it can be said that bank has taken unilateral decision and the purpose of seeking reply from the petitioner was defeated and wasted, and thus, the action of the respondents in effecting recovery of Rs.1,35,118/- is not legal and justifiable.

4. Reliance is placed upon the judgment dated 25.01.2019 passed by a Co-ordinate Bench of this Court in the case of '**Shanti Devi Vs. State of Punjab and others**' and the relevant portion of the same is re-produced as under:-

“6. It is a settled principle of law that any order which causes prejudice to a person, the rules of nature justice shall be followed. No unilateral decision can be taken even if one party thinks that the mistake is being rectified. In the present case, the recovery to the tune of ₹30,315/- was being made from the petitioner and that too without even informing her or giving the reasons for the same. Once, it has been admitted that the excess payment was made, the same could not have been recovered without any show cause notice to the petitioner and after considering the reply, if any,



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clarifying the position.

*7. Furthermore, there is no order even passed by the respondents for effecting the recovery from the petitioner. The respondents on their own decided to rectify their mistake by withdrawing the amount by putting a cut on the pension of the petitioner. This action of the respondents is not supported by any law rather the same is contrary to the settled principle of law. Hon'ble the Supreme Court in the case of **Chamoli District Cooperative Bank Limited through its Secretary/ Mahaprandhak and another Vs. Raghunath Singh Rana and others**, 2016(12) SCC 204, has held that even where there are no specific statutory rules regarding the observance of the rules of natural justice, still, it is incumbent that the concerned person is given due opportunity of hearing before passing any order, which is causing prejudice to him/her. The relevant paragraph of the said judgment 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.”

8. Even Division Bench of this Court while deciding **CWP No. 3756 of 1986**, decided on 22.09.1993, titled as **Lekhu Singh Vs. The Punjab SC Land Development & Finance Corporation, Chandigarh**, has held that the concept of the opportunity is a basic requirement which has to be extended to every action which has adverse civil or penal consequence. The relevant portion of the said judgment is as under :-

“6. One of the basic principles of natural justice is 'hear the other side'. Initially judicial opinion was that grant of an opportunity was required only while passing a judicial order or quasi-judicial order and that in a purely administrative function/order, opportunity had no role to play. However, with the efflux of time, the grant of an opportunity has become a requirement of law even for a purely administrative act. Still further the concept of opportunity being a basic requirement has been extended to every action which has adverse civil or penal



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consequences. Alteration of seniority and reversion have been held to have civil consequences and consequently, alteration of seniority or reversion from a given rank without the grant of an opportunity have been held to be vitiated, being violative of basic principles of natural justice.”

9. In view of the above, the action of the respondents in recovering the amount of ₹30,315/- from the pension of the petitioner is set-aside. The respondents are directed to refund the said amount to the petitioner within a period of two months from the receipt of the copy of this order. Thus, the present writ petition stands allowed.

10. However, the respondents are given liberty to proceed according to rules and after following the due process of law including the issuance of show cause notice to the petitioner, in case they found that the petitioner has been paid excess amount and the said excess amount can be recovered as per settled principle of law”.

5. In this view of the matter, the action of the respondents in effecting recovery from the petitioner without complying with the principles of natural justice is held to be illegal and arbitrary and accordingly, demand notice dated 23.07.2020 (Annexure P-2) is quashed and set aside. However, liberty is granted to the respondents-bank, if they intend to proceed further in the matter, they may first comply with the principles of natural justice by giving an opportunity of personal hearing to the petitioner, within a period of three months from today, from the date of receipt of a certified copy of this order. Till the passing of the fresh order, no recovery shall be effected from

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the pension of the petitioner. It is also made clear that a fresh decision which will taken by the concerned authority shall settle whether the amount is to be retained by the bank or to be paid to the petitioner. The amount of Rs.87,168/- so retained by the bank shall lie with the bank and to be adjusted after the necessary exercise is carried out.

6. With these observations, the present petition is disposed of.

12.11.2024
D.Bansal

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No