



RSA-3272-2015 (O&M)

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

(222)

RSA-3272-2015 (O&M)

Date of decision:- 05.09.2024

Charanjit Kaur

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGALPresent:- Ms. Monika Jalota, Advocate
for the appellant.Mr. Anil Bansal, DAG, Punjab
for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. Plaintiff-appellant is in second appeal before this Court assailing the findings recorded by the First Appellate Court.
2. Facts leading to the filing of the appeal are that on the recommendation of the Punjab Subordinate Service Selection Board, plaintiff was appointed as a Clerk in the department of Animal Husbandry in the year 1972. Over the period of time, she was promoted to higher posts and became due for promotion as Senior Assistant on 06.09.1984, when the post fell vacant, but due to an adverse entry in the ACR for the year 1982-83, she was ignored and her junior, Nirmal Kumari, was promoted. Appeal, filed by the plaintiff, was accepted and the adverse ACR was expunged on 11.11.1986. Despite representations, plaintiff's case for promotion was

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never considered. It was further pleaded that her pay was fixed vide order dated 23.10.2001, but this order was withdrawn on 15.05.2009 and a recovery of Rs.56,043/- was effected from the gratuity amount. Claiming that she was entitled to promotion from the date her junior was promoted and that recovery had been illegally effected from her retiral dues, she filed a suit for declaration and mandatory injunction.

3. Upon notice, defendants contested the claim by filing a written statement. Various preliminary objections were taken. It was submitted that the plaintiff was ignored for promotion as she had an adverse ACR and the service record of Nirmal Kumari was found up to the mark. After the adverse remarks were expunged, plaintiff never submitted a representation for promotion till her retirement on 31.10.2008. A stand was taken that the suit had been filed 24 years after the adverse entry was recorded and was clearly barred by time. Plaintiff filed replication to the written statement re-asserting her claiming. Trial Court framed issues on the basis of the pleadings of the parties, who led evidence in support of their respective case. After hearing, Trial Court by judgment dated 29.11.2013, decreed the suit to the effect that the plaintiff is entitled to promotion to the post of Senior Assistant, order dated 02.07.2009, Ex. P-12, effecting recovery from the retiral dues was held to be illegal and defendants were directed to refund of the deducted amount along with interest @ 9% p.a. from the date of recovery till realization. In appeal, filed by the defendants, learned District Judge, Patiala reversed the findings qua the recovery and rejected the plaintiff's claim for refund of the said amount. In so far as the other

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relief was concerned, the First Appellate Court modified the judgment and decree of the Trial Court and directed the defendants to consider the case of the plaintiff for promotion and further directed that if she is found suitable for promotion, then notional promotion be granted to her with consequential benefits. Plaintiff-appellant is before this Court in the above background.

4. Counsel for the appellant-plaintiff has confined the arguments to the recovery effected from the pensionary benefits of the appellant. She has urged that the amount has been recovered in violation of the principles of natural justice in as much as the plaintiff-appellant has not been given any prior notice before deducting the amount.

5. *Per contra*, learned State counsel has supported the judgment and decree under appeal and submits that as plaintiff's pay had been wrongly fixed and as plaintiff was granted an increment to which she was not entitled, the defendants were justified in recovering of the excess amount paid to her.

6. I have heard counsel for the parties and considered their respective submission, besides examining the record with their able assistance.

7. A perusal of the order dated 02.07.2019, Ex. P-12, shows that while releasing an amount of Rs.3.50 lacs, towards death-cum-retirement gratuity, a recovery of Rs.56,043/- has been effected. No evidence has been led by the defendants to show that before making this recovery, any show-cause notice was issued to the plaintiff or she was afforded with any opportunity to explain. Rather in his cross-examination, Dr. Harsh Mohan



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Walia, DW-1, Deputy Director, Animal Husbandry (Training) Patiala, has specifically admitted that before effecting recovery, no action oriented notice was given to the plaintiff. The order effecting recovery entails adverse monetary consequences and could not have been passed without extending an opportunity to explain or represent. Failure to afford any such opportunity to the plaintiff has resulted in the infraction of principles of natural justice.

8. In *Daffodills Pharmaceuticals Ltd. and another 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. The first Appellate Court, however, failed to notice that the recovery order has been issued by the defendant-respondents in breach of the principles of natural justice. Therefore, finding to the contrary recorded by it to this extent is reversed.

9. For the foregoing reasons, order dated 02.07.2009, Annexure P-12, cannot be sustained and is set aside. Judgment and decree passed by the Lower Appellate Court is set aside to this limited extent. Plaintiff-



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appellant is entitled to the refund of the amount of Rs.56,043/- along with interest @ 9% per annum from the date of recovery till refund.

10. With the above modification, appeal is disposed.

(SUVIR SEHGAL)
JUDGE

05.09.2024

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No