



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

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CWP-21356-2023

Date of decision : 02.12.2024

Savita Rani

.....Petitioner

V/S

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Pardeep Solath, Advocate for the petitioner.

Mr. Ravi Dutt Sharma, D.A.G., Haryana.

Mr. Vikas Chatrath, Advocate with
Mr. B.P.S. Thakur and Ms. Priya Kaushik,
Advocates for respondents No.2 & 3.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, quashing the impugned letter/demand notice dated 09.08.2023 (Annexure P-4), issued by respondent No.2, whereby the family pension of the petitioner has been reduced and direction has also been issued to make recovery of Rs.9,45,154/- from the petitioner without issuance of any notice. Further, seeking a writ of mandamus, directing the respondents not to make any deduction from the family pension of the petitioner.

2. Brief facts of the case, as have been pleaded in the petition, are that the husband of the petitioner namely Sh. Jasraj died on 30.09.2004 while discharging his duty as Junior Engineer in the office

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of respondent No.1. After his death, the petitioner got the family pension w.e.f. 01.10.2004 vide pension payment order dated 16.03.2005. As per the Haryana Civil Services (Revised Pension) Part-I Rules, 2009 dated 17.04.2009 applicable w.e.f. 01.01.2006, the petitioner is entitled for enhanced family pension upto 30.09.2014. The Government of Haryana revised the family pension again vide notification dated 10.01.2018 which is applicable w.e.f. 01.01.2016. However, the respondents did not revise the family pension of the petitioner and she kept on receiving less family pension. For the month of July, 2023 the petitioner has received basic family pension and dearness allowance i.e. Rs.25354+10649+1000 (medical) = 37,003/- which was reduced to Rs.16903+7100+1000 (medical) =25,003/- for the month of August, 2023 i.e. Rs.12,000/- less than the last pension received by the petitioner. On enquiry from respondents No.2 & 3, the petitioner came to know that since her family pension was wrongly calculated and she was receiving excess payment, therefore, her family pension has now been reduced and order of recovery dated 09.08.2023 has been passed against her. Thereafter, the petitioner tried to convince respondent No.2 that she is entitled for enhanced family pension and she is not responsible for any error in the calculation of family pension but to no avail. Hence this petition.

3. Vide order dated 25.09.2023, while issuing notice of motion, further recovery from the pension of the petitioner was stayed.

4. Learned counsel for the petitioner submits that although the

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demand notice dated 09.08.2023 (Annexure P-4) was issued to the petitioner seeking recovery of Rs.9,45,154/- and the petitioner was given an opportunity to submit response within 15 days from the date of receipt of the said demand notice, however, without passing any specific 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 from the family pension of the petitioner from the month of August, 2023. He further submits that even the demand notice dated 09.08.2023 was never served to the petitioner and respondents No.2 & 3 failed to attach any postal receipt or any other proof of service.

5. Per contra, learned counsel for the respondents-bank submits that since the excess pension has been paid to the petitioner, therefore, demand notice dated 09.08.2023 has been issued for recovery of the excess amount paid to the petitioner. However, he could not refute the fact that no opportunity of personal hearing was afforded to the petitioner before issuing demand notice dated 09.08.2023 and that the bank started recovery from the month of August, 2023 before receiving any reply from the petitioner.

6. I have heard learned counsel for the parties and gone through the relevant documents with their able assistance.

7. Admittedly, the demand notice for effecting recovery of Rs.9,45,154/-, being excess pension paid to the petitioner, from the family pension of the petitioner has been issued on 09.08.2023 and the petitioner was given an opportunity to submit response within 15 days



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from the date of receipt of the said demand notice. However, the respondents started recovery from the family pension of the petitioner from the month of August, 2003 without passing any specific order of recovery and giving any opportunity of personal hearing. 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.9,45,154/- is not legal and justifiable. While considering similar issue in ***Shanti Devi Vs. State of Punjab and others : 2019(1) S.C.T. 846***, the Coordinate Bench of this Court observed 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 Rs.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, 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 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”.

8. 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 09.08.2023 (Annexure P-4) 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. Till the passing of the fresh order, no recovery shall be effected from 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 already recovered is to be retained by the bank or to be paid to the petitioner.

9. Disposed of in the above terms.

02.12.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No