



CWP-26914-2022 (O&M) 1

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-26914-2022 (O&M)
Date of Decision: 03.09.2024

Prit Paul

.....Petitioner

Versus

Haryana Shehari Vikas Pradhikaran and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Nitin Sherwal, Advocate for the petitioner.

Mr. Prateek Mahajan, Advocate for respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of the impugned orders dated 29.07.2022 (Annexure P-13) and 16.09.2022 (Annexure P-14) whereby the order of stepping up of pay of the petitioner has been withdrawn.

2. The brief facts of the present case are that the petitioner was appointed as an Assistant Water Pump Operator in the office of respondent-Haryana Shehari Vikas Pradhikaran on 01.06.1983 on work charge basis. Thereafter, vide order dated 20.05.1997 (Annexure P-2) the services of the petitioner were regularized and he was re-designated on the post of Water Pump Operator (WPO) w.e.f. 03.08.1993. Thereafter, he was promoted to the post of Water Works Superintendent and on the same post he retired on 31.03.2023. While the petitioner was

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in service, vide order dated 05.05.2015 (Annexure P-7) he was granted benefits of stepping up of pay at par with other employees namely Paul Singh, Parmod Kumar and Baksha Ram who were stated to be juniors to the petitioner with a condition that if at any later stage any adverse remarks regarding the stepping up of pay with regard to his service are received then his benefit will be withdrawn and recovery will be made. In this regard, another letter was also issued from the office of the Superintending Engineer, HUDA, Circle, Panchkula to the Executive Engineer vide Annexure P-8 and in this way the pay of the petitioner was re-fixed by giving him the benefit of stepping up of pay. Thereafter, vide Annexure P-10, it was clarified by the Executive Engineer, HSVP Division No.1, Panchkula, that the pay of the petitioner is fixed after granting technical scale notionally and actual benefit shall be applicable w.e.f. 09.06.2007 to 09.08.2010. The petitioner thereafter vide Annexure P-11 made a representation to the Administrator, Chairman, Committee Field Staff, Panchkula, for grant of arrears as a consequence of the aforesaid benefit of stepping up of pay. Vide Annexure P-12, the aforesaid letter i.e. Annexure P-11, was forwarded by Superintending Engineer to the Executive Engineer-I, HSVP, Panchkula. Thereafter, impugned order dated 29.07.2022 (Annexure P-13) has been passed by the Superintending Engineer, HUDA Circle, Panchkula, whereby the order dated 05.05.2015 (Annexure P-7) in which the petitioner was granted benefits of stepping up of pay at par with other employees namely Paul Singh, Parmod Kumar and Baksha Ram was withdrawn and it was directed that recovery be made from the petitioner.

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3. Learned counsel for the petitioner submitted that the petitioner retired as Water Works Superintendent which falls in Category-C and vide Annexure P-7, the petitioner was granted the benefit of stepping up of pay at par with other junior employees which was abruptly withdrawn on 29.07.2022 by respondent No.3 vide Annexure P-13 and recovery has been ordered to be made, which is not permissible under the law because no notice was issued to the petitioner before withdrawing of the order dated 05.05.2015 and therefore it is in violation of the *principles of natural justice*. In addition to the above, he also submitted that once the benefit of grant of stepping up of pay at par with the juniors of the petitioner has been granted then there was no reason to withdraw the same. He submitted that since the petitioner was granted the benefit on the basis of parity with the aforesaid three employees namely Paul Singh, Parmod Kumar and Baksha Ram and such benefit has not been withdrawn from the aforesaid persons even till date and as such the action of the respondent-department in withdrawing the aforesaid benefit granted to the petitioner on the basis of the parity, is therefore unsustainable and unreasoned. He also submitted that even otherwise also once the petitioner has retired on 31.03.2023 as a Class-C employee then in any case if any benefit has already been granted to the petitioner even if it is granted erroneously at the time when he was in service then the same cannot be recovered from the petitioner after retirement in view of the judgment of Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih, 2015(4) SCC 334*** which is squarely applicable

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to the present case and therefore no recovery can be effected from the petitioner.

4. On the other hand, learned counsel appearing for respondents, submitted that it is correct that the petitioner retired as Water Works Superintendent on 31.03.2023. He submitted that so far as the grant and withdrawal of the benefit of stepping up of the pay, is concerned, the petitioner cannot seek any direction from this Court for grant of benefit which is in violation of the law. To substantiate his argument, he submitted that the State of Haryana has enacted and passed an Act which has been attached alongwith the reply filed by respondents vide Annexure R-4, which is called 'The Haryana (Abolition of Distinction of Pay Scale Between Technical and Non-Technical Posts) Act, 2014' (hereinafter to be referred to as 'Act') which was notified on 11.03.2014 and as per Section 1 (3) of the Act, it is deemed to have come into force w.e.f. 01.02.1981. He further submitted that vide Section 3 of the aforesaid Act, no person who is serving or has served on any post in any service under the State, shall be entitled to a higher pay scale on account of possessing a technical qualification, or on account of serving or having served on a post for which the prescribed qualification is of technical nature. He submitted that in this way after the passing of the aforesaid legislative enactment having the force of law that no person could have been granted the benefit of higher pay scale on the basis of possessing technical qualification. In other words the benefit of technical qualification for the purpose of granting of a pay-scale was abolished by the aforesaid Act of Legislature. He further submitted, that however,



there is an exception carved out under Section 10 of the Act as well, in which those who have already been granted the benefit have been protected.

5. Learned counsel for respondents submitted that the aforesaid three persons with whom the petitioner is seeking parity with regard to the grant of benefit of technical pay-scale w.e.f. 01.10.2012 i.e. much prior to the passing of the aforesaid Act and a perusal of the aforesaid Annexure P-3 would show that they were granted the benefit of stepping up of pay after grant of the technical scale. Since the aforesaid three persons were granted the aforesaid benefit of stepping up of pay prior to passing of the aforesaid Act, the same could not have been disturbed because of the saving clause as aforesaid. He submitted that the petitioner was granted the benefit of stepping up of his pay at par with his juniors on the basis of technical pay scale on 05.05.2015 i.e. after the passing of the aforesaid Act and therefore benefit could not have been granted to the petitioner even if the petitioner is claiming parity because grant of benefit of pay-scale on the basis of technical pay-scale was prohibited under the Act. He submitted that although there was a mistake on the part of respondent-department who have granted the aforesaid benefit to the petitioner after passing of the aforesaid Act but it remained undetected and at the time when the application was moved by the petitioner for grant of arrears then the entire accounts were scrutinized and it was found that petitioner could not have been granted the aforesaid benefit after passing of the aforesaid Act and the aforesaid benefit granted to the petitioner was withdrawn and recovery was

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directed to be effected from him. He also submitted that in this way the impugned order (Annexure P-13) cannot be set aside because the same is protected by a legislative enactment.

6. Learned counsel appearing for the respondents further submitted that so far as an argument raised by learned counsel for the petitioner with regard to the non-adherence to the *principles of natural justice* namely *audi alteram partem* is concerned, the aforesaid principle would not apply to the facts and circumstances of the present case because it would only be an empty formality because even if any notice is given to the petitioner for the purpose of withdrawing of the aforesaid benefit, no useful purpose would have been served because the benefit could not have been granted by the operation of law under the aforesaid Act. He also submitted that there can be no estoppel against law in this regard, therefore, the petitioner cannot claim any parity as well.

7. Learned counsel further submitted that so far as the plea of the petitioner that he is senior to the aforesaid three persons namely Paul Singh, Parmod Kumar and Baksha Ram is concerned, the same is also falsified from the reply filed by the respondents in which it has been clarified that the aforesaid persons were recruited on work charge basis prior to the petitioner but they were regularized on the same date and even in the seniority list (Annexure R-3), the petitioner is shown to be junior to the aforesaid three persons and therefore the aforesaid plea of the petitioner with regard to the parity would also be unsustainable on this ground as well because the petitioner was not infact senior to the aforesaid persons.

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8. He also referred to judgments of Hon'ble Supreme Court in ***M.C.Mehta versus Union of India 1999(6) SCC 237*** and ***Aligarh Muslim University versus Mansoor Ali Khan, 2000 (7) SCC 529***.

9. I have heard learned counsels for the parties.

10. The basic issue involved in the present case is as to whether the benefit which was granted to the petitioner could have been withdrawn vide impugned order at Annexure P-13 dated 29.07.2022 without affording any opportunity of hearing to the petitioner or not. The aforesaid benefit of stepping up of pay vide Annexure P-7 was granted to the petitioner on the basis of parity with the aforesaid three persons. A perusal of Annexure P-3 would show that the aforesaid three persons have been granted the benefit of technical pay-scale on 01.10.2012 and the aforesaid Act was passed in the year 2014 whereby under Section 3 of the Act, benefit of grant of pay-scale on the basis of technical qualification was prohibited. Although there was a saving clause in the aforesaid Act under Section 10 in which it is provided that those who have already been granted the benefit shall remain protected but the aforesaid exception could not have been made applicable to the petitioner because he was granted the benefit on 05.05.2015 which was much after passing of the aforesaid Act. However, on the other hand, the aforesaid three persons were granted the benefit of stepping up of pay prior to passing of the aforesaid Act and therefore they stood protected under the saving clause. So far as the present petitioner is concerned, he was granted the benefit vide Annexure P-7 on 05.05.2015 after coming



into force the aforesaid Act and therefore, the petitioner could not have been granted the aforesaid benefit.

11. However, an argument was raised by learned counsel for the petitioner that since the petitioner was granted the benefit on the basis of parity with the aforesaid three persons, the petitioner is entitled for the aforesaid benefit notwithstanding coming into force of the aforesaid Act because the right accrued to him was on the basis of parity only. The argument raised by learned counsel for the petitioner seems to be attractive but does not cut any ice. Once there is a legislative provision and by the operation of the law, grant of a benefit is prohibited then the mere fact that the same is based upon parity, if any, cannot be sustained. In other words, no direction can be issued by this Court in violation of a statutory provision which has the force of law and which is presumed to be constitutionally valid unless it is set aside. Admittedly, the petitioner does not come under the exception clause because he was granted the benefit after passing of the aforesaid Act.

12. Another argument which was raised by learned counsel for the petitioner with regard to the violation of *principles of natural justice* because no notice was issued to the petitioner before withdrawing the benefit is concerned, the same would also be not sustainable in view of the fact that it is a well settled law that even the *principles of natural justice* are not absolute in nature. Exceptions can always be carved out even to the *principles of natural justice*. The doctrine of 'empty formality' has been pressed into service in the present case considering the facts and circumstances of the present case. Even if the petitioner



was put to notice before withdrawal of the aforesaid benefit, the consequence of the order would have been the same because of the prohibition of grant of technical pay-scale in the aforesaid Act. Therefore, the argument raised by learned counsel for the petitioner pertaining to the violation of the *principles of natural justice* is not sustainable.

13. Hon'ble Supreme Court in *M.C. Mehta's case (Supra)* observed as under:-

“18.The above case is clear authority for the proposition that it is not always necessary for the court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order, if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law.

*23. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice, do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases, there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of “real substance” or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See **Malloch v. Aberdeen Corporation [1971] 1 W.L.R. 1578**, (per Lord Reid and Lord Wilberforce), **Glynn v. Keele University, 1971 (1) W.L.R. 87**, **Cinnamond v. British Airport Authority, 1980 (1) WLR 582** and other cases where such a view has been held. The latest addition to this view is **R v. Ealing Magistrates' Court exp. Fannaran, 1996 (8) Admn. L.R. 351 (358)** (see DeSmith, Suppl. p. 89) (1998) where Straughton, L.J., held that there must be*



*'demonstrable beyond doubt' that the result would have been different. Lord Woolf in **Lloyd v. McMohan, 1987 (2) WLR 821 (862)** has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand court in **McCarthy v. Grant 1959 NZLR 1014**, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood - not certainty - of prejudice'. On the other hand, Garner's Administrative Law, (8th Edition, 1996, pp. 271-272), says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from **Ridge v. Baldwin Megarry J. in John v. Rees, 1969(2) WLR 1294** stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J., has said that the "useless formality theory" is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that "convenience" and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality' theory in **R v. Chief Constable of the Thames Valley Police Force exp. Cotton, 1990 IRLR 344**, by giving six reasons. (see also his article 'Should Public Law Remedies be Discretionary (1991 PL 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural justice, Substance or Shadow' by Prof. D. H. Clark of Canada (see 1975 PL, pp. 27-63) contending that Malloch and Glynn were wrongly decided. Foules (Administrative Law, 8th Ed., 1996, p. 323), Craig (Administrative Law, 3rd Ed. p. 596), and others say that the Court cannot prejudge what is to be decided by the decision making authority. DeSmith, (5th Ed. 1994, paras 10.031 to 10.036), says courts have not yet committed themselves to any one view though discretion is always with the Court. Wade (Administrative Law, 5th Ed. 1994, pp. 526-530), says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to*



admitted or indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a “real likelihood” of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is considerable unanimity that the courts can, in exercise of their “discretion”, refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in [State Bank of Patiala v. S. K. Sharma, 1996 \(2\) S.C.T. 568 : 1996 \(3\) SCC 364](#), [Rajendra Singh v. State of M. P., 1996 \(5\) SCC 460](#), that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived. “

14. Similarly in the case of **Aligarh Muslim University (supra)**,

Hon’ble Supreme Court held as under:-

*“19. As pointed recently in [M.C. Mehta Vs. Union of India, 1999 \(6\) SCC 237: 1999 \(1\) SCT 561 \(SC\)](#), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in **Gadde Venkateswara Rao v. Government of Andhra Pradesh, 1966 (2) SCR 172 : AIR 1966 Supreme Court 828**, it is not necessary to quash the order merely because of violation of principles of natural justice.*



21. Chinnappa Reddy, J. in S.L. Kapoor's case, laid two exceptions (at p.395) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception."

15. So far as the plea of the petitioner with regard to the fact that he is senior to the aforesaid three persons is concerned the same has also been clarified by the respondents in their reply and vide Annexure R-3 the petitioner is shown to be junior to the aforesaid three persons.

16. The petitioner is seeking relief from this Court which is totally in violation of a statute. Even if, for the sake of arguments the plea of parity is considered, the same will also be unsustainable because there can be no estoppel against the statute. Therefore the plea of the petitioner that the order (Annexure P-13) is liable to be set aside cannot be sustained.

17. The learned counsel for the petitioner during the course of arguments has also raised a plea that the petitioner retired as a Group-C employee on 31.03.2023 and the impugned order vide Annexure P-13 by which the benefit was withdrawn from the petitioner was passed on 29.07.2022 and therefore when the petitioner had filed the present writ petition an interim order was passed on 23.11.2022 wherein the operation of the impugned order (Annexure P-13) was directed to be stayed but an amount of Rs.20,000/- already stood deducted in the month of October 2022 from the salary of the petitioner. He further



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submitted that during the pendency of the present petition, he has already retired on 31.03.2023 and after the retirement no amount can be recovered from the petitioner because it is a settled law that any amount which has been given to an employee even by way of an error or by negligence etc. on part of the employer-department, the same cannot be recovered after his retirement in view of the Sub para Nos.(i) and (ii) of the concluding part of the judgment of Hon'ble Supreme Court in **Rafiq Masih (supra)**. This Court is in complete agreement with the argument raised by learned counsel for the petitioner that even if an amount has been given to any employee especially falling in Group-C and D during his service which may be erroneously paid but after retirement no such amount can be recovered. Even otherwise also it is a case of the respondents themselves that aforesaid benefit was granted to the petitioner erroneously. The concluding part of the judgment of Hon'ble Supreme Court in **Rafiq Masih's case (supra)** is reproduced as under:-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).



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(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

18. In view of the aforesaid facts and circumstances of the present case, the petition is partly allowed. Impugned order at Annexure P-13 is held to be legally sustainable. The recovery of Rs.20,000/- which has been effected from the petitioner during the course of his service is also legally sustainable and cannot be refunded back to the petitioner.

19. Since the petitioner retired on 31.03.2023, no recovery can be made from the petitioner from his retiral benefits because to that effect the prayer of the petitioner is squarely covered by the judgment of Hon'ble Supreme Court in **Rafiq Masih's case (supra)**. It is, therefore, directed that no recovery shall be effected from the petitioner now since he has already retired.

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20. However, it shall be open for the respondents to fix the last pay drawn of the petitioner for the purpose of refixing his retiral/pensionary benefits in accordance with law.

21. Since it is a case where after passing of the aforesaid Act in the year 2014, the respondents granted the benefit as aforesaid to the petitioner vide Annexure P-7 in the year 2015 in violation of the aforesaid Act and admittedly it was a glaring mistake on the part of the respondent-department and the respondent-department was rather supposed to have known about the passing of the aforesaid enactment, the petitioner shall also be entitled for costs which are assessed as Rs.25,000/- which shall be paid to the petitioner by the respondents within a period of three months.

(JASGURPREET SINGH PURI)
JUDGE

03.09.2024*shweta*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No