

**RA-CW-210-2018 in
CWP-11255-2016 and other connected matters**

2024-PHHC-090305



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 218)**

(1) **RA-CW-210-2018 in
CWP-11255-2016
Date of Decision : 18.07.2024**
Bhupinder Singh and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

(2) **RA-CW-162-2018 in
CWP-5190-2017**
Gursimrat Singh and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

(3) **RA-CW-159-2018 in
CWP-15582-2017**
Sardara Singh and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

(4) **RA-CW-160-2018 in
CWP-19554-2016**
Dev Raj Goyal and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

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**(5) RA-CW-161-2018 in
CWP-6896-2016**

Harnek Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Chatrath, Advocate with
Mr. Akshat Kalia, Advocate
for the review-applicants.

Mr. Sunny Singla, Advocate
for the non-applicants/petitioners
in RA-CW-162-2018, RA-CW-160-2018 and
RA-CW-159-2018.

Mr. Vivek Aggarwal, Advocate with
Mr. Lalit Rishi, Advocate
for the non-applicants/petitioners in RA-CW-210-2018.

Mr. Satnam Preet Singh, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. The present review applications have been filed so as to review the order dated 10.05.2018 by which, the writ petitions filed by the petitioners were allowed.
2. It may be noticed that the review applications have been filed by the respondent-Bank. As per the review applications, as the petitioners had undertaken to refund the excess payment received, the Bank was

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within its jurisdiction to recover the said excess amount from the petitioners.

3. Learned counsel for the petitioners submit that though the LTC amount is to be paid by the State and not by the Bank and the Bank is only the agency following the direction of the State and in the present case, the State has not passed any order for recovery of the excess amount of LTC paid to the petitioners, hence, the Bank has no jurisdiction to recover the amount on its own as there has never been a master and servant relationship between the petitioners and the bank.

4. Learned counsel for the petitioners further submits that even otherwise, even if it is accepted for the sake of argument that the Bank can recover the excess amount paid, then also, the same cannot be done without issuance of the show cause notice and in the present case, no show cause notice was ever served upon the petitioners before affecting the recovery, which act on the part of the respondent-Bank is arbitrary and illegal.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. The issue raised in the writ petitions was that certain amount paid as Leave Travel Concession to the petitioners, was recovered by the Bank without giving any opportunity of hearing to them. It may be noticed that similarly situated employees also filed Writ Petition being

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CWP No. 23198 of 2015 titled as ***Khazan Chand & Others Vs. State of Punjab and others***, decided on 06.10.2017, wherein, the Co-ordinate Bench had set-aside the recovery orders and when the present petitions came up for hearing, it was conceded by the State that the same are covered as per the judgment in ***Khazan Chand and others' case (supra)*** and the present writ petitions were allowed by the learned Single Judge vide judgment dated 10.05.2018, which is sought to be reviewed.

7. It may be noticed that after the judgment in ***Khazan Chand and others' case (supra)***, certain other similarly situated employees also approached this Court by filing CWP No. 7582 of 2017 titled as ***Naginder Singh and others Vs. State of Punjab and others***, which writ petition was dismissed vide judgment dated 18.04.2017 against which, the LPA No. 1367 of 2017 was filed. The Division Bench while passing order in LPA No. 1367 of 2017 set-aside the judgment of the learned Single Judge dated 18.04.2017 by which, the similar recoveries being done from similarly situated employees was upheld. Division Bench held that keeping in view the judgment in ***Khazan Chand and others' case (supra)***, no recovery could have been done from the petitioners and a direction was issued to refund the recoveries already done.

8. Keeping in view the above, once the Division Bench of this Court in ***Naginder Singh and others's case (supra)***, has already upheld the judgment in ***Khazan Chand and others' case (supra)*** and no

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differentiating fact between the petitioners in the present petitions or the petitioners in ***Khazan Chand and others' case (supra)*** or the appellants in LPA No. 1367 of 2017 has been pointed out, the grant of benefit by the main judgment, which is sought to be reviewed, needs no re-consideration by this Court.

9. Even otherwise, as per the settled principle of law, no recovery can be done from an employee without giving any show cause notice to the concerned official as recovery involves financial aspect.

10. It is a settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 2265 of 2011 titled as ***Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others***, 2016(12) SCC 204, decided on 17.05.2016 and in Civil Appeal No. 9417 of 2019 titled as ***M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another*** 2019 (12) JT 283, decided on 13.12.2019 that where any order passed by the authority concerned causes prejudice to an employee, especially financial liability, an opportunity of hearing is must and no order causing prejudice to an employee can be passed by an employer unilaterally. The relevant para of ***Daffodills Pharmaceuticals's case (supra)*** is as under:-

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities,



that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.

16. The High Court, in the opinion of this court, fell into error in holding that in matters of award of public contracts, the scope of inquiry in judicial review is limited. Granted, such jurisdiction is extremely circumscribed; no doubt the court had refused to grant relief to Daffodils against its plea of wrongful rejection of its tender. However, what the impugned judgment clearly overlooks is that the action of the state, not to procure indefinitely, on an assumption of complicity by Daffodils, was in flagrant violation of principles of natural justice.”

11. The relevant paragraph of the ***Chamoli's case (supra)*** 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.](#)

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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.”

- 12. Accordingly, the review petitions are dismissed.
- 13. Pending miscellaneous application, if any, also stands disposed of.
- 14. A photocopy of this order be placed on the file of connected cases.

July 18, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No