

**CWP-26549-2018****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****(207)****CWP-26549-2018****Date of Decision : January 10, 2025****Gaja Nand****.. Petitioner****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. S.K. Chawla, Advocate, (joined through VC) and
Mr. Vishal Sharma, Advocate, for the petitioner.

Ms. Shruti, Assistant Advocate General, Punjab.

Ms. Sonia Sharma, Advocate, for respondents No. 2 and 4.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance being raised by the petitioner is that after his retirement, certain recoveries have been done from his pensionary benefits which is not admissible hence, an amount of Rs.35,492/-, which has been deducted from his pensionary benefits, is liable to be refunded by the State.

2. Further, prayer of the petitioner is that his pay was not fixed in accordance with law hence, the respondents be directed to fix his pay in accordance with law keeping in view the pay being given to an employee who was junior to the petitioner.



3. At the time of hearing, learned counsel for the petitioner submits that the prayer with regard to re-fixation of the pay of the petitioner be treated as not pressed keeping in view the fact that the petitioner has retired from service in the year 2005 and the present writ petition was filed after 13 years of retirement and that too claiming the service benefits.

4. Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that the benefit which was not admissible to the petitioner in the year 1996 was wrongly extended to him and after the retirement, upon checking of the pay granted to the petitioner, the said discrepancy came to the notice of the Department hence, the recovery was effected from the pensionary benefits of the petitioner after re-fixing his salary.

5. On being asked as to whether, any show cause notice was given to the petitioner before re-fixing salary and withdrawing the benefit already granted, learned counsel for the respondent-High Court has not been able to point out any such notice given to the petitioner before effecting the recovery from his pensionary benefits.

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

7. As per the respondents, certain benefits were wrongly extended to the petitioner in the year 1996, which only came to the notice of the Department in the year 2005 after the retirement of the petitioner. Now, the question arises is whether, the said fact will give right to the Department to claim recovery of the excess amount.



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8. The said question of law has already been settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***. The relevant paragraph 12 of the said judgment is as under:

“12. 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).

(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.”

9. A bare perusal of the above reproduction would show that no recovery can be done from a class III and class IV employee and in the present case, the petitioner was working as a class III employee even at the



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time of his retirement.

10. Further, as per clause II of the paragraph 12 of the judgment of ***Rafiq Masih's case (supra)***, no recovery can be done from a retired employee. In the present case, the petitioner had already retired and the recovery of Rs.35,492/- was done from his pensionary benefits.

11. Further, as per clause III of the paragraph 12 of the judgment of ***Rafiq Masih's case (supra)***, no recovery can be done from an employee even if the excess payment has been made in case the said excess payment continued to be paid for a period of more than five years. In the present case, concededly the excess payment was made to the petitioner for a period of approximately nine years before the said benefit was withdrawn and recovery was done.

12. Learned counsel for the respondents has not been able to point out as to how, the judgment in ***Rafiq Masih's case (supra)*** cannot be made applicable to the petitioner.

13. At this stage, the argument has been raised on behalf of the learned counsel for the respondent-High Court that the petitioner had given an undertaking.

14. It may be noticed that the said undertaking will not come to the rescue of the High Court for the reason that the same was only given at the time of retirement and not at the time of giving the benefit in the year 1996 which was sought to be withdrawn hence, the said undertaking will not give a right to the High Court to withdraw a benefit given 10 years prior to the date of undertaking and that too after retirement.



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15. Further, as stated hereinbefore, before any order causing prejudice to an employee or even to a retired employee, notice has to be given. In the present case, without giving any notice for withdrawal of a benefit and consequent recovery, straightaway recovery was done from the pensionary benefits of the petitioner, which is even otherwise arbitrary and illegal and violates the principle of Rules of natural justice.

16. 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



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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.”

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. 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.”

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17. Keeping in view the abovesaid settled principle of law, no order causing prejudice to an employee could have been passed without giving an opportunity of hearing. Hence, the recovery of Rs.35,492/- done from the pensionary benefits of the petitioner at the time of his retirement is held to be bad and the respondents are directed to refund the same to the petitioner. Let the order be complied with within a period of eight weeks from the date of receipt of copy of this order.

18. The present writ petition is disposed of in above terms.

January 10, 2025*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No