

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

CWP-11864-2001

Date of Decision: February 04, 2015

Chandi RamPetitioner

vs.

HUDA and othersRespondents

CORAM HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present Mr.D.R.Bansal, Advocate for the petitioner.

Mr. Humesh Kumar, Advocate
for Mr. Aman Chaudhary, Advocate for respondents.

RAMESHWAR SINGH MALIK, J(Oral)

Present writ petition is directed against the order dated 09.05.2000 (Annexure P10), whereby the pay of the petitioner was reduced without issuing any show cause notice and also order dated 28.06.2001, whereby representation dated 06.06.2000 made by the petitioner vide Annexure P11 seeking permission to exercise his option was also rejected by passing a non speaking order.

Notice of motion was issued and pursuant, thereto, written statement was filed on behalf of the respondents.

Learned counsel for the petitioner submits that once certain benefits were granted to the petitioner by a conscious decision dated 09.05.2000 (Annexure P10) and there was no allegation of either misrepresentation or concealment against the petitioner, there was no occasion for the respondent authorities for passing the impugned order Annexure P10 and that too without issuing any show cause notice. He

further submits that before approaching this Court, petitioner submitted a self contained representation dated 06.06.2000 (Annexure P11) but that was also illegally dismissed by the respondent authorities, while passing a totally non speaking and cryptic order Annexure P12. Learned counsel for the petitioner argued that since the impugned orders have been passed violating the basic principle of natural justice, the present writ petition may be allowed and the impugned orders may be set aside.

Per contra, learned counsel for the respondents submits that once the bonafide mistake earlier committed came to the notice of the respondent authorities, it was thought appropriate to pass fresh order by way of Annexure P10. He further submits that since the representation of the petitioner Annexure P11 was found to be without any substance, the same was rejected vide impugned order Annexure P12. He prays for dismissal of the petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the case, instant writ petition deserves to be allowed, for the following reasons.

It is matter of record and not in dispute that petitioner was granted certain service benefits by the competent authorities, by taking a conscious decision vide order dated 02.05.2000 Annexure P9. Thereafter, the impugned order dated 09.05.2000 (Annexure P10) came to be passed, reducing the pay of the petitioner but without issuing any show cause notice to him. Feeling genuinely aggrieved against the impugned order Annexure

P10, petitioner submitted a self contained representation Annexure P11 dated 06.06.2000 but the issues raised by the petitioner were neither properly considered nor appreciated by the respondent authorities, while passing the impugned order dated 28.06.2001 Annexure P12. It has also gone undisputed on record that before passing the impugned order Annexure P10, no show cause notice was issued to the petitioner nor he was granted an opportunity of being heard. Since the respondent authorities have violated the basic principle of natural justice before passing the impugned order Annexure P10, the same cannot be sustained.

Once the impugned order reducing the pay of the petitioner was going to visit petitioner with civil consequences, respondent authorities were under legal obligation to issue a show cause notice to the petitioner and grant him an opportunity of being heard before passing an order detrimental to the interest of the petitioner. Further, the respondent authorities failed to consider and appreciate the material issue raised by the petitioner in his representation dated 06.06.2000 (Annexure P11), while passing the impugned order dated 28.06.2001 (Annexure P12) and the same cannot be sustained. Since both the impugned orders have been passed in glaring violation of the basic principle of natural justice, this Court feels no hesitation to conclude that the impugned orders are patently illegal and same cannot be sustained.

It is neither pleaded nor argued case on behalf of the respondents that there was any allegation of either misrepresentation or concealment against the petitioner. Once it is so, the respondent authorities were duty bound to grant an opportunity of being heard to the petitioner

before passing any order against him. However, in the present case, since the golden rule of *audi altrem partrem* has been violated by the respondent authorities, the impugned orders cannot be sustained, for this reason also.

No further argument was raised.

Considering the peculiar facts and circumstances of the case noted above coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders have been found to be patently illegal, same are hereby set aside. However, liberty is granted to the respondents to pass a fresh order, if so required but only after ensuring meticulous compliance of the principle of natural justice i.e issuing a show cause notice as well as after granting him an opportunity of being heard.

Resultantly, with the above said observations made and directions issued, the instant writ petition stands allowed, however, with no order as to costs.

04.02.2015
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(RAMESHWAR SINGH MALIK)
JUDGE