

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

**Civil Writ Petition No. 14950 of 2011
Date of Decision: 13.2.2015**

Chander Dev

.....Petitioner.

Versus

Chaudhary Charan Singh Haryana Agricultural University, Hisar and
others

.....Respondents.

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajinder Goyal, Advocate
for the petitioner.

Mr. Kshitij Sharma, Advocate for
Mr. Saurabh Gulia, Advocate
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J. (Oral)

Present writ petition is directed against the order dated 25.5.2010 (Annexure P-10), whereby the post of Mason on which the petitioner was regularised vide order dated 15.2.1997 (Annexure P-1) was downgraded to the post of helper and that too, without issuing any show cause notice or granting any opportunity of being heard to the petitioner.

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

Learned counsel for the petitioner submits that the impugned order was not only illegal but it was without jurisdiction as well, because as per the information supplied to the petitioner under the Right to Information Act, 2005, vide Annexure P-11, the competent authority never re-designated the post of mason to that of helper. In view of the abovesaid official information supplied to the petitioner vide Annexure P-11, the Director of Research was not even competent to pass the impugned order Annexure P-10. He further submits that there was no allegation of any misrepresentation or concealment against the petitioner and the impugned order was not sustainable in law. He prays for setting aside the impugned order by allowing the present writ petition.

Per contra, learned counsel for the respondents submits that since the petitioner was found working as a daily paid labourer, he was re-designated as helper by passing the impugned order Annexure P-10. He also submits that since the petitioner is seeking a writ of Mandamus, directing the respondent authorities to include the name of the petitioner in the seniority list of Mason, he ought to have impleaded the would be affected employees from the category of mason, as party-respondents. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after going through 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 facts and circumstances of the case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that service of the petitioner was regularised on the post of mason by the competent authority vide order dated 15.2.1997 (Annexure P-1). 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, before passing the order of regularisation dated 15.2.1997 (Annexure P-1). In this view of the matter, it can be safely concluded that respondent No.2 has exceeded its jurisdiction, while passing the impugned order dated 25.5.2010 (Annexure P-10), whereby the petitioner was re-designated from the post of mason to that of helper.

It is also undisputed on record that before passing the impugned order, neither any show cause notice was issued to the petitioner nor any opportunity of being heard was granted to him, thereby glaringly violating the basic principles of natural justice. Having said that, this Court feels no hesitation to conclude that the impugned order dated 25.5.2010 (Annexure P-10) is not only arbitrary on the face of it, but without jurisdiction as well and the same cannot be sustained.

A bare reading of the impugned order would show that it was going to visit the petitioner with civil consequences. Once respondent No.2 was intending to pass an order detrimental to the interest of the petitioner, he was duty bound to issue a show cause

notice or grant an opportunity of being heard to the petitioner, so as to enable him to defend his cause. Admittedly, it has not been so done by the respondent authorities. Thus, the golden rule of Audi Altarem Partem has been glaringly violated by the respondent authorities, while passing the impugned orders and the same cannot be sustained, for this reason as well.

During the course of hearing, when a pointed question was put to the learned counsel for the respondents that once the competent authority has not re-designated any post of Mason to that of helper, then how respondent No. 2 could have passed the impugned order, he had no answer and rightly so, because it was a matter of record. In this view of the matter, it is unhesitatingly held that respondent No.2 has misdirected himself, while passing the impugned order and the same cannot be sustained, for this reason also.

No other 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 order has been found to be patently illegal, the same cannot be sustained and is hereby set aside.

Natural consequences would follow. However, lest there should be any ambiguity, it is clarified that the respondent authorities shall grant status quo ante to the petitioner, as was obtaining pursuant to the order of regularisation dated 15.2.1997 (Annexure P-1). Petitioner shall be put in the seniority list of mason and will be

granted consequential service benefits. Let the respondent authorities complete this exercise at an early date but in any case within a period of three months from the date of receipt of a certified copy of this order.

Resultantly, the instant writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

13.2.2015
AK Sharma