

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

CWP No.27365 of 2015

Date of Decision:24.12.2015

Dr. Naina Salathia

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr. R.S. Manhas, Advocate for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Challenge in this petition is to the order dated February 10, 2011 passed by the Principal Secretary, Punjab Government, Health and Family Welfare Department withdrawing the benefit of higher pay scale granted consequent upon completion of 9/14 years of service wrongly w.e.f. January 1, 1996 instead of January 1, 2005. However, the excess salary received by the petitioner has been ordered not to be recovered. The petitioner has represented against the impugned order, which was passed ex parte and without affording an opportunity of pre-decisional hearing to her. Those representation/s remain pending correspondence inter se the departments of the State Government as to fixation of responsibility on erring officials for the delay which has occurred by non-decision on the representations.

Despite passage of 4 years, Mr. Manhas submits that the delay cannot be viewed against the petitioner as it was the obligation of the respondents to act in accordance with law and they have not taken a final decision on the representations so far. He is right in saying so.

It may be noted that the impugned order has been sought to be justified by the decision of this Court in CWP No.15473 of 2009 (Sham Lal Saini Vs. State of Punjab & ors.) and CWP No.15932 of 2009 (Raj Kumar vs. State of Punjab) and the review exercise carried out by the State in terms of the mandate of the High Court with respect to reviewing the Annual Confidential Reports of a large number of medical doctors in PCMS and to reconsider the same. Mr. Manhas points out that in similar circumstances, the learned Single Judge disposed of CWP No.14282 of 2011 and connected writ petitions by quashing the impugned orders passed against the petitioners therein since they were passed without issuing any show cause notice or affording any opportunity of hearing to the petitioners. The Court noticed that service benefits were granted to the petitioners way back in time and they were enjoying the monetary benefits uninterruptedly. The impugned administrative orders in those cases were found to contain a penal sting and since the pay of the petitioners has been refixed at the later stage then the adverse consequences could not be visited upon a hapless class of employees without resort to the principles of natural justice, in the first instance. The order of the Coordinate Bench in the aforesaid writ petition was handed down on January 23, 2012. The present case is covered by that order.

Mr. Manhas claims parity of treatment and prays that the impugned order in the present case suffers from the same infirmity as was pointed out before the Coordinate Bench in CWP No.14282 of 2011 and the connected cases and the grievance was directed to be redressed accordingly.

Be that as it may, instead of prolonging the agony of the petitioner by issuing notice of motion to the State and receiving its response, this Court considers it appropriate to quash ex parte impugned order and direct the State to pass a fresh order after putting the petitioner to notice and giving him an action oriented and effective opportunity to represent his case against punishment of reduction of pay and salary. Needless to say that the petitioner has already served legal notice in this regard and it would now be for the decision-maker in the respondents to take up the legal notice forthwith together with the copy of this writ petition to be treated as a supplementary representation and to decide the matter on merits by passing a speaking order.

With these directions, the petition stands disposed of.

December 24, 2015
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(RAJIV NARAIN RAINA)
JUDGE