

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

CWP No.1605 of 2016

Date of Decision: 06.12.2016

Beant Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. J.P.S. Sidhu, Advocate
for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab
for the State.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing letter dated 23.12.2015 (Annexure P-6), whereby, the services of the petitioner have been terminated without issuing any show cause notice in violation to principles of natural justice. A further prayer has also been made for issuance of direction to the respondents to reinstate the petitioner on the post of Sweeper against which he was working and was appointed on compassionate ground as per policy of the State Government after the death of his mother.

Briefly, the facts of the case, as made out in the present petition, are that the mother of the petitioner, namely, Smt. Krishna Devi was working as Class-IV employee-Sweeper at Primary Health Centre,

Village Kulrian, Tehsil Budhlada, District Mansa on regular basis. She was working for the last more than 20 years and had expired during service on 17.06.2011. Petitioner was residing with his mother and was fully dependent upon her. He was not having any source of income. Petitioner had given a representation to the respondents to appoint him on compassionate grounds. Certain formalities were completed and the affidavits of his brothers and sister stating no objection from their side were also obtained. The case of the petitioner for appointment on compassionate grounds was forwarded to the Government but no action was taken thereupon. Ultimately, it was rejected vide letter dated 16.09.2013. Thereafter, the petitioner filed **CWP No.9039 of 2014** for quashing of letter dated 16.09.2013, which was quashed by this Court vide order dated 18.09.2015 and the respondents were directed to pass a speaking order on the claim of the petitioner. Respondent no.3 considered the case of the petitioner for appointment and accordingly, he was appointed vide order dated 03.12.2015 (Annexure P-5). Thereafter, the services of the petitioner were terminated on 23.12.2015 without mentioning any reason and without giving any opportunity of hearing and without issuing any show cause notice to him. The said order of termination of service dated 23.12.2015 has been challenged in the present petition.

Learned counsel for the petitioner submits that the impugned order is totally non-speaking and no show cause notice was issued and the same has been passed in violation of principles of natural justice. The petitioner was appointed as per directions issued by this Court but no reason, whatsoever, has been mentioned. The said order has been passed by mentioning that the case of the petitioner is not covered under the policy.

Learned counsel also submits that the action of the respondents is discriminatory as similarly situated persons have been appointed and the appointment already granted to the petitioner has been cancelled.

Reply in pursuance of notice of motion was filed by respondents No.1 to 3, which is on record.

Learned State counsel submits that the case of the petitioner is not covered under the policy as his father was a retired employee and his two elder brothers, namely, Karan Singh and Raj Kumar are government employees. The petitioner is married and his father is getting pension. The financial condition of the family of the petitioner is sound and as such, he is not entitled for appointment on compassionate grounds.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

The facts relating to service of mother of the petitioner and her death are not disputed. It is also not disputed that the petitioner filed **CWP No.9039 of 2014** for quashing of letter dated 16.09.2013, which was quashed vide order dated 18.09.2015 passed by this Court and the respondents were directed to pass a speaking order on the claim of the petitioner. On the basis of said directions, the petitioner was appointed on compassionate grounds vide order dated 03.12.2015 (Annexure P-5). However, immediately after a period of 20 days, the order of termination of services of the petitioner has been passed mentioning therein that the orders of appointment as Sweeper are immediately cancelled and the petitioner has been relieved from duty on 23.12.2015 itself.

On perusal of impugned order dated 23.12.2015, it appears that

no reason whatsoever has been mentioned. Although, there is a reference of letter dated 22.12.2015 issued by the Director, Health and Family Welfare, Punjab, Chandigarh. It is also not disputed that the petitioner was not given any opportunity of hearing or any show cause notice was issued to him. The petitioner has joined his duties after his appointment but subsequently, his appointment has been cancelled and he has been directed to be relieved from duty immediately on 23.12.2015. As per case of the petitioner, he was fully dependent upon his mother and he was residing with his mother. Not only the petitioner but his other family members were also dependent upon the salary of his mother. It is also mentioned in the application that there is no source of income of the petitioner. The names of other family members were also mentioned in the representation. The mother of the petitioner left behind her husband, three sons including petitioner and one sister. The brothers and sister of the petitioner are married and they are residing separately from their mother. They are also having separate ration cards. It is also mentioned that the father of the petitioner is also residing separately and is having separate ration card. Petitioner had also submitted an affidavit of all family members mentioning therein that they are not having any objection in case the petitioner is appointed on compassionate grounds but still his case was rejected. As per directions issued by this Court, the case of the petitioner was considered and accordingly, he was appointed. It was the duty of the respondent department to verify previously about the financial condition of the family members of the petitioner. It is not disputed that no reason, whatsoever, has been mentioned in the impugned order of cancellation of appointment. It is also not disputed that the petitioner was not served any notice and no opportunity of hearing was given to him.

The object of rules of natural justice is to give opportunity to the aggrieved party just to prevent miscarriage of justice. The doctrine of '*audi alteram partem*' has three basis essentials. Firstly, the person against whom an order is required to be passed must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by passing reasoned or speaking order.

In the present case, neither any opportunity of hearing has been given to the petitioner nor any show cause notice was issued. The giving of reason is one of the fundamental right of good administration and as such, the reason is also an indispensable part of sound judicial system. The affected party has a right to know as to why the decision has been taken against him/her. The requirement of natural justice is to spell out reasons in the order passed. In other words, it can be said that order should be speaking and well reasoned. In case, there is failure on the part of the respondents to give reasons, it amounts to denial of justice.

In the present case, neither the reasons have been mentioned nor those reasons have been conveyed to the petitioner to put up his stand. Simply it has been mentioned that the appointment of the petitioner is hereby cancelled.

The procedure laid down under the rules has not been complied with and as such, non compliance of the rules is also violative of principles of natural justice, which can be considered as failure of justice. In the absence of non-speaking order and non-mentioning of reason, the impugned order is liable to be set aside. Even there is no reference that any communication was conveyed to the petitioner or any opportunity of

hearing was given to him. In absence of any speaking order, an administrative order cannot be sustained. Recording of reasons, fairness, transparency and compliance of principles of natural justice is the life line of administrative orders. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The administrative authority is duty bound to act judicially and cannot decide the matters on considerations of policy or expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision making process.

Reference to a judgment of Hon'ble the Supreme Court in ***State of Orissa v. Dhaniram Luhar 2004(2) RCR (Criminal) 868*** for the purpose is also relevant. Paragraph 8 thereof is extracted below :

“8. Even in respect of administrative orders Lord Denning, M.R. In Breen Amalgamated Engg. Union observed :

“ The giving of reasons is one of the fundamentals of good administration.”

In ***Alexander Machinery (Dudley) Ltd. v. Crabtree***, it was observed :

“Failure to give reasons amounts to denial of justice.” “Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the Courts to perform their appellate or exercise the power of judicial review

in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”

In view of the facts and law position as discussed above, it appears that neither any reason has been mentioned nor any opportunity of hearing has been given to the petitioner; the impugned order is totally non-speaking and has been passed without any application of mind. Accordingly, the present petition is allowed. The impugned order dated 23.12.2015 is liable to be set aside and the same is hereby quashed.

However, the respondents are directed to reconsider the case of the petitioner by giving adequate/reasonable opportunity of hearing. The necessary exercise be done within a period of two months from the date of receipt of certified copy of this order.

(DAYA CHAUDHARY)
JUDGE

06.12.2016
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes