

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 25153 of 2012 (O&M)

Date of Decision: 02.08.2016.

Jaibir Singh

--Petitioner

Versus

State of Haryana and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ashwani Bakshi, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

TEJINDER SINGH DHINDSA.J

The petitioner is serving on the post of Driver under the Haryana Roadways.

Challenge in the instant petition is to the order dated 6.5.2010 (Annexure P-6), whereby regularization of his services has been directed w.e.f. 1.1.1991.

Pleadings on record would indicate that vide order dated 8.4.1988 issued by the General Manager, Haryana Roadways, Hisar (Annexure P-2) the services of various Drivers initially engaged on ad hoc basis on their names having been sponsored through the Employment Exchange, had been regularized including that of the petitioner and w.e.f. 12.6.1987 i.e. the date of his initial appointment.

The entire case set out on behalf of the petitioner is that the impugned order dated 6.5.2010 (Annexure P-6) has been passed without any opportunity of hearing or issuance of notice and to his detriment.

In the written statement that has been filed on behalf of the State the specific averments as regards opportunity of hearing having not

been granted to the petitioner, have not been denied.

On 28.3.2016, when this matter had come up for hearing, learned State counsel had been granted time to verify as to whether the date of regularization of the services of the petitioner had been changed to his detriment without any notice to him and also without granting of any opportunity of hearing. Matter was accordingly adjourned to 9.5.2016. The matter having been taken up on 9.5.2016 learned State counsel prayed for yet another opportunity to complete instructions.

Today again learned State counsel expresses his inability to apprise the Court as to whether the petitioner had been afforded any opportunity prior to passing of the impugned order.

This Court has been left with no other option but to draw an inference against the State. This would be more so in view of the pleadings on record as in the written statement there is no specific denial to the averments made by the petitioner as regards opportunity of hearing having not been granted prior to passing of the impugned order dated 6.5.2010 at Annexure P-6.

Clearly, there has been a negation of the principles of natural justice. It is by now well settled that prior to passing of any order which would entail adverse civil consequence, an opportunity of hearing/notice has to be issued to the employee concerned.

State action would also have to be termed as arbitrary inasmuch as in the impugned order dated 6.5.2010 (Annexure P-6) there is not even a reference to the earlier order dated 8.4.1988 at Annexure P-2, whereby services of the petitioner had stood regularized w.e.f. 12.6.1987. Suffice it to observe that the contents of the order dated 8.4.1988 (Annexure P-2)

have not been disputed on behalf of the State.

In the considered view of this Court, the impugned order dated 6.5.2010 at Annexure P-6, as such, cannot sustain.

Writ petition is, accordingly, allowed. Order dated 6.5.2010 (Annexure P-6) by virtue of which the date of regularization of the services of petitioner had been changed from 12.6.1987 to 1.1.1991, is set aside and quashed.

Resultantly, the petitioner is held to be regularized on the post of Driver w.e.f. 12.6.1987 itself as per order dated 8.4.1988 (Annexure P-2).

Petitioner would be entitled to all consequential benefits emanating from such order.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

02.08.2016
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Whether speaking/reasoned: Yes

Whether Reportable: Yes