

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

CWP No. 11281 of 2016
Date of decision: 11.07.2017

Shamsher

....Petitioner(s)

Versus

Chaudhary Devi Lal Cooperative Sugar Mills Ltd. and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Harish Bhardwaj, Advocate, for the petitioner.

Mr. Deepak Balyan, Advocate, for the respondents.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the order dated 29.04.2016 (Annexure P-8) whereby, the petitioner has been reverted back to the post of Juice Sulphitation Attendant (Seasonal Permanent) from the post of the Clerk (Seasonal Permanent) by the Managing Director of the respondent-Mill on the ground that prior permission had not been obtained before acquiring the higher qualification.

It is not disputed that the petitioner was appointed on 24.05.2002 as Juice Sulphitation Attendant. Vide notice dated 13.01.2014 (Annexure P-1), applications were invited from eligible candidates for the post of Clerks (Seasonal Permanent) both by way of direct recruitment as well as by way of promotion.

It is the case of the petitioner that he had applied on 13.01.2014 (Annexure P-2) for the said post and he was thereafter promoted vide order dated 10.02.2014 (Annexure P-3). Thereafter also, he got annual increments from 01.09.2014 in the pay scale of ₹5,200-20200 with grade pay of ₹1,900/- as per communication dated 27.09.2014 (Annexure P-4).

A show cause notice was issued on 08.09.2015 (Annexure P-5) that prior permission had not been obtained before enhancing the academic eligibility and, therefore, he did not fulfill the eligibility on the date of his promotion. Resultantly, explanation was called from him by the respondents. The petitioner, vide reply dated 18.09.2015 (Annexure P-6) submitted that he was a seasonal permanent employee and not having the knowledge of obtaining permission for improving his educational qualification and when he had come to know that he had to obtain the permission from office prior to promotion, he did so. Therefore, he being eligible, prayed for filing of the show cause notice. Thereafter also, he was granted another annual increment vide communication dated 28.09.2015 (Annexure P-7). The reasoning given by the Managing Director of the respondent-Mill in the impugned order reads thus:-

“It is written with regard to the subject cited that vide aforesaid letter No., you were issued Show Cause Notice. Your reply is not satisfactory. You have not obtained the prior permission before acquiring the higher education. So you are reverted back to your previous post (J.S. Attendant Seasonal Permanent).”

In the written statement also, it has not been justified as to under which Rule/Provision, the petitioner was required to seek prior permission for improving of his qualification during his tenure of employment. Neither the issue whether a seasonal permanent employee is required to seek permission as such has been redressed. The petitioner had also brought to the notice of the respondents that he had obtained permission from the office prior to promotion when he came to know about the said issue. Even the said issue has not been addressed in the impugned

order.

In such circumstances, the reasons which have been given do not justify the extreme order of reversion which has been passed taking away the civil rights of the petitioner whereby, his promotion has been set aside and he has been reverted back to his previous post. It is settled principle that there should be valid reasons as such before any drastic step can be taken so that this Court could examine whether there is any justification in the action as such. Reference can be made to the judgment of the Apex Court in ***M/s. Kranti Associates Pvt. Ltd. and another vs. Sh. Masood Ahmed Khan and others, 2010 (9) SCC 496*** wherein the following principles have been laid down:-

“a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6 of European Convention of Human Rights](#) which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Resultantly, this Court is of the opinion that the order is not justified in the facts and circumstances. Accordingly, the present writ petition is allowed. Order dated 29.04.2016 (Annexure P-8) is set aside. However, liberty is granted to the Managing Director of the respondent to pass a fresh order, if so warranted referring to the appropriate provisions under which the petitioner has to take prior permission and decide the issue afresh, if so desired. The respondents shall also take into consideration whether the matter can be also given post facto approval thereafter and whether the respondents have been prejudiced in any manner as such by the action of the petitioner.

11.07.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No