

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

(1) CWP No. 19636 of 2014 (O&M)
Date of decision: 05.10.2018

Khushdeep Kaur and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(2) CWP No. 4336 of 2015 (O&M)
Date of decision: 05.10.2018

Leela Devi and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arora, Advocate for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

The aforementioned two petitions are being decided by way of common order as issue involved in both the petitions is similar. However, the facts are being derived from CWP-19636-2014 in order to avoid repetition.

By way of instant writ petitions, the petitioners seek quashing of the impugned order dated 04.06.2014 (Annexure P-3) passed by respondent No.3 whereby after a period of more than four years the

dates of promotion of the petitioners have been changed without affording them opportunity of hearing.

The petitioners are working on the posts of principal in PES Group 'A' cadre in different government schools. It is asserted that without giving any show cause notice or opportunity of hearing, respondent No.3 has changed the date of promotion of the petitioners from 15.02.2010/19.10.2011 to 08.05.2012, by virtue of impugned order dated 04.06.2014 (Annexure P-3), in an arbitrary manner. He further submits that on account of change of date of promotion, the pay of the petitioners have been reduced and the recoveries have also been ordered to be made which is against the ratio of law laid down by this Court in **Balwant Singh Kataria Vs. State of Haryana**, 1997(3) SCT 475 (P&H) (DB).

On the other hand, learned State counsel submits that the order of promotion was a conditional order which specifically finds mention that the promotion are subject to final outcome of the pending litigation pending before this Court, therefore, the impugned order cannot be questioned by the petitioners.

Heard.

In **Balwant Singh Kataria Vs. State of Haryana 1997(3) SCT 475**, it has been observed as under:-

“3. Learned counsel appearing for the respondents submits that it was considered by the respondents that the petitioner had no reply to submit; as such they were justified in passing the impugned order without affording the petitioner an opportunity of being heard. We do not agree with this general

proposal of law propounded before us. The compliance of the principles of natural justice cannot be dispensed with under any circumstances. It is also settled position of law that the benefits once conferred upon a civil servant, even though under erroneous assumptions, cannot be withdrawn without affording him at least the opportunity of hearing. It is not for the employer to decide as to what possible defence can be taken by the civil servant after the issuance of show cause notice. It is also not open to the employer to decide himself that as according to him, the employee would not have any defence to the proposed action, the compliance of the principles of natural justice was not necessary. If the power to decide as to whether the affected employee would have any defence or not, is given to the employer, the basic principle of natural justice would be negated and frustrated. The principles of natural justice can neither be put in strait-jacket, nor allowed to be measured or weighed by the person or authority responsible for compliance of the aforesaid principles.

4. In the instant case, none had complained against the promotion of the petitioner to the post of Manager; vide Annexure P-1. The Court while deciding the aforesaid writ petition (No. 14146/1993) had not issued any direction to the respondents to determine as to whether the petitioner was rightly promoted to the post of Manager or not. In the absence of such complaint or direction, if the respondents chose to reconsider their action by reviewing the orders already passed, which amounted to reversion of the petitioner, they were under constitutional obligation to afford the petitioner an opportunity of hearing before passing the said order. The respondents have miserably failed to justify their action, by which the petitioner has been reverted from the post of Manager; vide Annexure P-4. ”

It is to be noticed that initially the petitioners were appointed as lecturers with the respondent department and subsequently, they were

promoted and had been working on the post of principal in different government schools. Admittedly, the impugned order has been passed without giving any show cause notice or opportunity of hearing whereby the date of promotion has been changed causing financial loss to the petitioners and the same is in violation of principles of natural justice.

Keeping in view the above position, the present petitions are allowed. Consequently, the impugned order dated 04.06.2014 (Annexure P-3) is hereby set aside. The petitioners are held entitled to all the consequential benefits. However, the respondents are at liberty to issue notice to the petitioners and take action thereupon, if so advised, after affording opportunity of hearing and complying with the principles of natural justice.

05.10.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No