

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

- (1)** **CWP No. 8183 of 2014 (O&M).**
Date of Decision: 07.05.2019.
Harkiran Kaur and others
... Petitioners
Versus
State of Punjab and others
... Respondents
- (2)** **CWP No. 10672 of 2014 (O&M).**
Veer Bala and others
... Petitioners
Versus
State of Punjab and others
... Respondents
- (3)** **CWP No. 8218 of 2014 (O&M).**
Ashok Kumar Chuchra and others
... Petitioners
Versus
State of Punjab and others
... Respondents
- (4)** **CWP No. 8706 of 2014 (O&M).**
Nasib Kaur and others
... Petitioners
Versus
State of Punjab and another
... Respondents

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan**

Present : Mr. Kapil Kakkar, Advocate,
for the petitioner(s) in CWP-8183-2014, 10672-
2014 & 8218-2014.

Mr. Sunny Singla, Advocate,
for the petitioners in CWP-8706-2014.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of aforementioned four civil writ petitions as common questions of facts and law are involved therein.

The facts are being taken from C.W.P. No. 8183 of 2014.

By way of instant writ petitions, the petitioners seek quashing of the impugned order dated 16.04.2014 (Annexure P-4) 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 Lecturers in Punjab Education Department 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 to 08.05.2012, by virtue of impugned order dated 16.04.2014 (Annexure P-6), 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 the petitioners were appointed as lecturers with the respondent department and have been working on the post of Lecturers 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 16.04.2014 (Annexure P-6) is hereby set aside. 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.

A photocopy of this order be placed on the files of other connected case(s).

07.05.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No