

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-23479-2015 (O&M)
Date of decision: 13.01.2020

Vinod

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. S.K. Nehra, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

GIRISH AGNIHOTRI, J. (Oral)

The present petition has been filed by the petitioner-Vinod Kumar, the then Head Constable, *inter alia* praying for quashing of order dated 13.02.2015 (Annexure P-6) and order dated 15.09.2014 (Annexure P-4), passed by respondent No.3 (Appellate Authority).

Learned counsel for the petitioner at the outset, makes a reference to the order dated 15.09.2014, passed by the Appellate Authority (Annexure P-4). He also makes a reference to the detailed pleadings in the appeal (Annexure P-3). He submits that in case, the Appellate Authority would have considered all the pleas taken in the appeal and would have given hearing both on facts and law, the petitioner would have satisfied the authority with their pleas. He then relies on a judgment of Hon'ble Supreme Court of India in *M/s Kranti Associates Pvt. Ltd. And another vs. Sh.*

Masood Ahmed Khan and others, “2010(9) SCC 496”. He specifically relies on Paras No.15, 17 & 51 of the judgment, which are reproduced as under:-

“15. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in [A.K. Kraipak and others vs. Union of India and others](#) reported in AIR 1970 SC 150.

xxxx xxxx xxxx xxxx

17. The expression ‘speaking order’ was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)

xxxx xxxx xxxx xxxx

51. Summarizing the above discussion, this Court holds:

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"

Learned counsel for the State however submits that the punishment order (Annexure P-2) takes care of all the facts. He however has not been able to controvert/deny the fact that no reasons have been

given by the First Appellate Authority in the order (Annexure P-4).

In view of the observations made by the Hon'ble Supreme Court of India, this Court deems it appropriate to quash the order passed by the Appellate Authority (Annexure P-4) and the matter is remanded back to Appellate Authority to give appropriate hearing to the petitioner/representative and pass detailed reasoned order considering the pleas/defense taken by the petitioner.

Let the needful be done within two months from the date of receipt of certified copy of this order. It is also made clear that the Appellate Authority shall pass the order *de hors* the order passed by the Revisional Authority.

Accordingly, the present Writ Petition is disposed of .

(GIRISH AGNIHOTRI)
JUDGE

13.01.2020
anju rani

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