

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 19027 of 2017 (O & M)

Date of decision: 27.11.2020

202

Mahender Singh and others

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Samrat Malik, Advocate,
Mr. Sunil Kumar Nehra, Advocate,
Mr. Jasbir Singh Malik, Advocate,
for the petitioners.

Mr. RKS Brar, Addl. A.G., Haryana.

(Proceedings are conducted through video
conferencing as per instructions).

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of seven writ petitions i.e. CWP Nos. 19027, 28021, 29226 of 2017; 7789, 10960, 12452 and 18783 of 2018, since common questions of facts and law are involved in all the writ petitions. Facts are being taken from ***CWP No. 19027 of 2017, Mahender Singh and others vs. State of Haryana and others***, in which pleadings are complete.

Prayer in the present writ petition filed under Article 226 of the Constitution of India is for quashing the order dated 28.07.2017 (Annexure P-4) whereby, the regularization order dated 12.06.2017 (Annexure P-3) has been withdrawn and for seeking further declaration that the petitioners were rightly regularized vide the earlier order. Reference has been made to the earlier litigation inter se (Annexures P-1 and P-2), rendered by the

Division Bench in ***CWP No. 22516 of 2012, Mohinder Singh and others vs. State of Haryana and others*** decided on 01.04.2013 wherein, the controversy of the pay structure admissible to drivers and conductors recruited in Haryana Roadways was the subject matter of consideration. Resultantly, the Division Bench had come to a conclusion that the petitioners could not be paid the consolidated salary and, therefore, the Rules to that extent were unconstitutional. They were held entitled to minimum of pay scale from the date of initial appointment and their pay was to be fixed accordingly. The arrears were limited to 3 years and 2 months prior to the filing of objections.

Reliance has been placed upon the judgment of the Apex Court in ***Civil Appeal Nos. 7391-7395 of 2013, State of Haryana and others vs. Mohinder Singh and others*** decided on 31.01.2017 (Annexure P-2) whereby, the said judgment was affirmed but the arrears which were to be paid to the employees were from the date of the judgment of the Division Bench i.e. 01.04.2013. Resultantly, it was further directed that this would be applicable to those employees who had not approached the High Court or the Apex Court.

It is the case of the petitioners that in pursuance of the said orders (Annexures P-1 and P-2), regularization was ordered from the date of the initial appointment in the pay scale of Rs.4,000-6,000/- and the dates of appointments were ranging from 27.03.1996 to 07.05.1999 and the said order was passed by respondent no. 3 on 12.06.2017 (Annexure P-3). A month and a half later, the said regularization order has been withdrawn by the same respondent in compliance of the directions of respondent no. 2 on 28.07.2014 (Annexure P-4). It is, thus, argued that the principles of natural

justice as such were violated and, therefore, the orders are liable to be set aside on this ground only.

In the written statement filed by respondents no. 1 to 3, various defences have been taken regarding the illegality in the appointment of the petitioners and it has been averred that the Establishment Branch of respondent no. 3 misinterpreted the decision dated 31.01.2017 and wrongly and illegally regularized the services of the petitioners. Resultantly, the defence taken is that it is an administrative error which could be rectified at any stage without hearing the affected party since the illegal orders had been passed which are stated to be in compliance of the directions of this Court and the Apex Court.

Thus, it is apparent that the petitioners' valuable rights as such were affected without issuing any show cause notice and putting them on caveat that benefits as such of regularization which had been granted from the date of appointment were being set aside. Thus, the orders as such withdrawing the benefits which were granted without observing the principles of *Audi Alteram Partem* are liable to be quashed on this account.

Reliance can be placed upon a recent three Judge Bench judgment of the Apex Court in ***Civil Appeal Nos. 3498, 3499 and 3500 of 2020, State of Uttar Pradesh vs. Sudhir Kumar Singh*** decided on 16.10.2020 wherein, the principles as such were laid down which read thus:-

“(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2)Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3)No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4)In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5)The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

Counsel for the petitioners also submits that in case the petitioners are given opportunity, they would satisfy the respondents regarding their claim and the respondents would be at liberty to pass fresh orders in accordance with law.

Resultantly, this Court is of the opinion that without

commenting upon the objections as such to the entitlement of the petitioners as has been raised by the respondents, the orders are liable to be set aside on the ground of violation of principles of natural justice.

Resultantly, the writ petitions are allowed for quashing of the impugned order dated 28.07.2017 (Annexure P-4) whereby, the orders of regularization have been withdrawn leaving it open to the respondents to follow the procedure by issuing necessary show cause notice and taking the reply of the employees before passing the orders afresh in accordance with law.

Needless to say that this Court has not commented upon the merits of the case and neither any relief as such has been denied to the petitioners and they are open to seek their remedies in accordance with law.

27.11.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No