

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(242)

CWP No. 3807 of 2022

Date of Decision : 16.11.2022

Poonam and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. L.K. Gollen, Advocate for
Mr. Deepak Kumar Gollen, Advocate for the petitioners.

Mr. Sandeep Singh Mann, Addl. A.G., Haryana.

Harsimran Singh Sethi J. (Oral)

Learned counsel for the petitioners argues that petitioners were directly recruited as Clerks in pursuance to the Advertisement dated 23.11.2012 and the petitioners at the time of the appointment had already passed computer proficiency test. After the selection of the petitioners in the year 2012, the respondent-State issued a Notification on 17.11.2018 (Annexure P-3) that the Clerks, who are already working, are required to pass the State Eligibility Test in Computer Appreciation and Applications. After the introduction of the State Eligibility Test, the respondents re-considered the fact and decided on 05.05.2019 that the Clerks, who have already passed Computer Proficiency Test, which is on the same line as State Eligibility Test, those candidates are exempted from passing the State Eligibility Test. Keeping in view the said decision, the petitioners were

granted exemption from passing the State Eligibility Test by the competent authority vide order dated 25.08.2021 (Annexure P-10).

Keeping in view the said decision dated 25.08.2021 (Annexure P-10), the petitioners were granted increment, which have become available to them w.e.f. 01.07.2019, 01.07.2020 and 01.07.2021 vide order dated 10.09.2021 having endorsement dated 14.09.2021(Annexure P-11).

Thereafter, without giving any opportunity of hearing to the petitioners, the order granting the increment was withdrawn by the respondents on 01.10.2021 by passing Annexure P-12.

The grievance of the petitioners is that the withdrawal of the grant of increments from 01.07.2019, 01.07.2020 and 01.07.2021 is bad in law and the said action is under challenge in the present petition.

Learned counsel for the respondents submits that the petitioners have not passed the State Eligibility Test, which is must as per the new Notification of respondent-State hence, the petitioners cannot be granted increment keeping in view the said decision, which was taken in the year 2018. Learned State counsel concedes that nothing has been mentioned in the reply with regard to the grant of exemption to the petitioners marked by the competent authority vide order dated 25.08.2021 (Annexure P-10) and the reply is also silent as to whether, before withdrawing the benefit vide order dated 01.10.2021 having endorsement dated 05.10.2021 (Annexure P-12), the respondents had followed the rules of natural justice or not.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The petitioners were appointed in the year 2012, when there

was no condition of passing of the State Eligibility Test as the said condition was only introduced in the year 2018. Further, immediately upon the issuance of the said Notification, the respondents also issued the decision of the Government dated 05.05.2019 to the effect that where a candidate has already passed computer proficiency test, which is on the same line as State Eligibility Test in Computer Appreciation and Application conducted by the High Court, there is no requirement of passing of the State Eligibility Test in Computer Appreciation and Application. That being so, respondents themselves granted the petitioners exemption from passing the State Eligibility Test, which exemption is in operation even as of now. Once, the exemption granted to the petitioners vide order dated 25.08.2021 (Annexure P-10) is still in operation, the withdrawal of the benefit extended to the petitioners on the basis of the 2018 Notification is totally arbitrary and illegal. The withdrawal of the benefit is without any application of mind and by ignoring the fact that petitioners were exempted from passing of State Eligibility Test in Computer Application and were not required to pass the same. Hence, the said order dated 01.10.2021 having endorsement dated 05.10.2021 (Annexure P-12) cannot be sustained in the eyes of law.

Even otherwise, once a benefit was extended to the petitioners, which was also implemented by the respondents, in case the respondents needed to withdraw the benefit, the respondents are under an obligation to follow the rules of natural justice as, withdrawal of the order Annexure P-11, has penal consequences qua the said aspect.

It is a settled principle of law settled by the Hon'ble Supreme

Court of India in Civil Appeal No. 2265 of 2011 titled as ***Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others***, 2016(12) SCC 204, decided on 17.05.2016 and in Civil Appeal No. 9417 of 2019 titled as ***M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another*** 2019 (12) JT 283, decided on 13.12.2019 that where any order passed by the authority concerned causes prejudice to an employee, especially financial liability, an opportunity of hearing is must and no order causing prejudice to an employee can be passed by an employer unilaterally. The relevant para of ***Daffodills Pharmaceuticals's case (supra)*** is as under:-

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.

16. The High Court, in the opinion of this court, fell into error in holding that in matters of award of public contracts, the scope of inquiry in judicial review is limited. Granted, such jurisdiction is extremely circumscribed; no doubt the court had refused to grant relief to Daffodils against its plea of wrongful rejection of its tender. However, what the impugned judgment clearly overlooks is that the action of the state, not to procure

indefinitely, on an assumption of complicity by Daffodils, was in flagrant violation of principles of natural justice.”

The relevant paragraph of the ***Chamoli's case (supra)*** is as under:-

“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in [Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen](#) reported in (1964) 3 SCR 616 has laid down following:-

“... An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the inquiry officer records his findings with reasons for the same in his report.”

Keeping in view the above, the order dated 01.10.2021 having endorsement dated 05.10.2021 (Annexure P-12) is set-aside being contrary to the exemption granted to the petitioners vide order dated 25.08.2021 (Annexure P-10) as well as for not following the rules of natural justice.

Keeping in view the above, as the order dated 01.10.2021 having endorsement dated 05.10.2021 (Annexure P-12) is quashed, the natural corollary is that benefit extended to the petitioners vide order dated

10.09.2021 having endorsement dated 14.09.2021 (Annexure P-11) shall stand revived and the petitioners be extended the benefits admissible under the said order qua the grant of increments for the period in question without insisting upon passing of the State Eligibility Test for which the petitioners already stand exempted by the competent authority.

Let the benefits, accrued under this order be extended to the petitioners within a period of two months of the receipt of copy of this order.

Petition is allowed in above terms.

November 16, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No