

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

(269)

CWP-1867-2021 (O&M)

Date of Decision : August 24, 2022

Rajesh Kumar Jindal

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(269-A)

CWP-15916-2021

Sanjiv Kumar Walia

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gaurav Chopra, Senior Advocate, with
Mr. Saurabh Jain, Advocate, for the petitioner(s)
in both petitions.

Mr. Sandeep Singh Mann, Additional Advocate General,
Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-3650-CWP-2021 in CWP-1867-2021

As prayed for, the application is allowed.

Annexures P-24 and P-25 are taken on record.

CWP-1867-2021 and CWP-15916-2021

By this common order, two writ petitions, the details of which have been given in the heading of the order, are being disposed of, as both the petitions involve the same question of law based on similar facts. For the sake of convenience, the facts are being taken from CWP No.1867 of 2021:-

In the present petition, the grievance of the petitioner is that the impugned order dated 06.08.2019 (Annexure P-11) by which order, the date of promotion of the petitioner as Senior Lecturer, as initially granted on 01.06.2011, has been modified, has been passed without giving any opportunity of hearing to the petitioner.

The prayer of the petitioner is that any order, which visits an employee with adverse consequences, cannot be passed without applying of the rules of natural justice and in the present case, it is the specific averment of the petitioner that before passing the impugned order 06.08.2019 (Annexure P-11), no opportunity of hearing has been given to the petitioner and the said order visits the petitioner with the adverse consequences as his date of promotion as Senior Lecturer has been changed to their detriment, which will have consequential ramification effecting the petitioner in future as well.

After notice of motion, the respondents have filed the reply. In paragraph 4 of the preliminary submission of the reply, the respondents have conceded the fact that no opportunity of hearing was given to the petitioner before passing the impugned order dated 06.08.2019 (Annexure P-11).

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

The law on the question whether a unilateral order without following rules of natural justice can be passed by an employer, which causes prejudice to an employee is well settled.

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.”

A bare perusal of the above settled principle of law would show that wherever an employee is to be proceeded against and an order can be passed, which order causes prejudice to the concerned employee, the same can be passed only after following rules of natural justice and in case of

failure, the said order cannot be sustained in the eyes of law.

In the present case, it is a conceded position that before passing the order dated 06.08.2019 (Annexure P-11), no opportunity of hearing was given to the petitioner, which fact itself render the impugned order in contravention to the settled principle of law, which have been noticed hereinbefore.

Keeping in view the above, order dated 06.08.2019 (Annexure P-11) in both the petitions, is set aside.

As the order dated 06.08.2019 (Annexure P-11) in both the petitions is being set aside on a technicality, the respondents will be within their jurisdiction to pass a fresh order in accordance with law after giving due opportunity of hearing to the petitioner.

The present writ petitions are allowed in above terms.

A photocopy of this order be placed on the file of other connected case.

August 24, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No