

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

(227)

CWP-17948-2017

Date of Decision : October 29, 2022

Kirmani

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. M.D. Khan, Advocate, for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

Learned counsel for the petitioner argues that in the present case, though the petitioner was selected and appointed on contract basis but his services were terminated vide order dated 12.04.2017 (Annexure P-1) on the ground that the petitioner was not eligible to be granted marks for the diploma in Mechanical Engineering which has been obtained by the petitioner for January 2008 to June 2008 on the ground that the said period overlapped with the another qualification of the petitioner. Learned counsel for the petitioner further argues that before passing the order, which has been passed on the basis of certain allegations, no opportunity of hearing was given to the petitioner which causes prejudice to him.

Learned counsel for the petitioner submits that even otherwise, there was no overlapping of the degrees of the petitioner for the reason that the petitioner finished his training as Craft Instructor in January 2008 after which date, the petitioner has enrolled himself for the diploma in Mechanical Engineering in April 2008 by paying late fees and completed the same in June 2008 and therefore, there was no overlapping of the said degree. Learned counsel for the petitioner further submits that had the petitioner been granted the opportunity to defend, the petitioner would have explained everything.

Learned State counsel submits that once the diploma for which the marks were given to the petitioner clearly stated that the same is for the period January 2008 to June 2008, there was a clear overlapping as the petitioner was already undergoing a course upto 31.01.2008 and therefore, the selection of the petitioner on contract basis was bad.

Learned State counsel though concedes the fact that as per the facts on record, there is nothing in regards to that the petitioner was given hearing before passing the order of termination.

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

It is a settled principle of law that in case any action is to be taken against an employee, an opportunity of hearing must be granted when the action is being taken on the basis of certain alleged misconduct.

The Hon'ble Supreme Court of India in ***Civil Appeal No.9417 of 2019 titled as M/s. Daffodils Pharmaceuticals Limited and another vs. State of U.P and another, decided on 13.12.2019***, has held that no one can be inflicted with adverse order without being afforded a minimum

opportunity of hearing. Relevant paragraph of the said judgment is reproduced 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.”

In the present case, nothing has come on record that before passing the impugned order, the petitioner was heard especially when keeping in view the facts and circumstances prima facie, there is an explanation which has been given by the petitioner with regard to the obtaining of the degrees.

The impugned order dated 12.04.2017 (Annexure P-1) is set aside with the direction to the respondents to pass a fresh order after giving due opportunity of hearing to the petitioner and thereafter ascertain whether the petitioner needs to be allowed to continue in service or not.

Learned counsel for the petitioner submits that as the petitioner was on contract basis and did not perform the duties, he will not claim any salary till the passing of the present order but the respondents be directed to reinstate the petitioner in service forthwith though the said reinstatement be subject to any order to be passed by the respondents afresh keeping in view

the liberty given.

Keeping in view the above, the present petition is allowed and the respondents are directed to reinstate the petitioner forthwith on the same terms and conditions but without any back wages as being conceded by the learned counsel for the petitioner. However, the said reinstatement will be subject to the fresh order to be passed by the respondent-authority.

The respondents will be at liberty to pass a fresh order in case they feel that the selection of the petitioner is not in accordance with law.

October 29, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes