

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229

CWP-29533-2017

Date of Decision :25.07.2022

Kamal Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parveen Kumar Rohilla, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, challenge is to order dated 10.11.2016 (Annexure P/3), by which, the pay of the petitioner has been refixed by the respondents. Learned counsel for the petitioner submits that the claim of the petitioner for stepping up of his pay, equivalent to his junior namely, Sunita Nagra was accepted by the respondents vide order dated 25.05.2015 (Annexure P/1) and consequential order, fixing the pay of the petitioner was passed by the respondents on 30.04.2016 (Annexure P/2). Learned counsel for the petitioner submits that without issuing any show cause notice or giving any opportunity of hearing to the petitioner, the said order dated 30.04.2016 (Annexure P/2) has been withdrawn by the respondents and pay of the petitioner was again refixed, which could not have been done by the respondents as no order causing prejudice to an employee could be passed without following rules of natural justice and

giving any opportunity of hearing.

After notice of motion, the respondents have filed reply stating therein that initially the pay of the petitioner was wrongly fixed, which needed to be rectified. It is not denied by the respondents that no show cause notice was issued to the petitioner before passing an impugned order dated 10.11.2016 (Annexure P/3) by the respondents. Learned State counsel submits that keeping in view the undertaking given by the petitioner, no opportunity of hearing was required to be given to the petitioner.

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

The question whether an order which adversely affects an employee, can be passed unilaterally by the authorities concerned or an opportunity of hearing needs to be given to an employee already stands settled.

In a recent judgment passed by Hon'ble the Supreme Court of India in the case of **M/s Daffodills Pharmaceuticals Limited and another vs. State of U.P. and another 2019 (12) JT 283**, it has been held that no person can be inflicted with an adverse order without being afforded a minimum opportunity of hearing and a prior intimation of the same. The relevant paragraph of the judgment 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 judgement 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.

Further, this Court while deciding CWP No.16858 of 2017 on 25.01.2019 relying upon ***“Chamoli District Co-operative Bank Limited through its Secretary/Mahaprandhak and another v Raghunath Singh Rana and others”, 2016 (12) SCC 204***, has set aside the reduction in pension, which was done without affording an opportunity of hearing. Relevant paragraph of the judgment is as under:-

“It is a settled principle of law that any order which causes prejudice to a person, the rules of nature justice shall be followed. No unilateral decision can be taken even if one party thinks that the mistake is being rectified. In the present case, the recovery to the tune of Rs.30,315/- was being made from the petitioner and that too without even informing her or giving the reasons for the same. Once, it has been admitted that the excess payment was made, the same could not have been recovered without any show cause notice to the petitioner and after considering the reply, if any, clarifying the position.

Furthermore, there is no order even passed by the respondents for effecting the recovery from the petitioner. The respondents on their own decided to rectify their mistake by withdrawing the amount by putting a cut on the pension of the petitioner. This action of the respondents is not supported by any law rather the same is contrary to the settled principle of law. Hon'ble the Supreme Court in the case of **Chamoli District Cooperative Bank**

Limited through its Secretary/Mahaprandhak and another Vs. Raghunath Singh Rana and others, 2016(12) SCC 204, has held that even where there are no specific statutory rules regarding the observance of the rules of natural justice, still, it is incumbent that the concerned person is given due opportunity of hearing before passing any order, which is causing prejudice to him/her.”

As far as the argument of the learned State counsel that an undertaking was given by the petitioner giving jurisdiction to the respondents to withdraw the benefits in case extended against Rules or law, the same will not cover the case of the respondents. No doubt, keeping in view the undertaking, benefits granted to the petitioner can be withdrawn but, the same has to be done in accordance with law. As per the settled principle of law, a show cause notice, asking the employee about his/her objections with regard to the proposed action to be taken by the department is required to be issued to the employee. An undertaking by the employee does not give authority to the employer to pass an order against an employee unilaterally.

Keeping in view the settled principle of law noticed hereinbefore, no order causing prejudice to an employee can be passed without issuing a show cause notice to him. In the present case, order dated 10.11.2016 (Annexure P/3) has been passed by the respondents without following rules of natural justice. Hence, impugned order dated 10.11.2016 (Annexure P/3) passed by the respondents is set aside. However, respondents are at liberty to pass a fresh order in accordance with law.

July 25, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No