

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

CWP-3027-2023 (O&M)

Date of decision: 14.02.2023

Neelam Rani and others

....Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Nitesh Singla, Advocate for the petitioners

Mr. Vikas Arora, DAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioners pray for issuance of a writ in the nature of Certiorari to set aside the order dated 08.02.2023. In substance, the petitioners claim that their promotion orders dated 05.01.2023 and 12.01.2023 have been withdrawn, without following the principles of natural justice.

2. The relevant facts, in brief, are required to be noticed.

3. The petitioners were appointed as the Anganwadi Helper/Mini Anganwadi workers. The Anganwadi Helper/Mini Anganwadi workers are engaged under a scheme issued by the State Government. There are no service rules which entitle them to be considered for promotion. They are recruited on payment of a fixed honorarium. On 03.01.2023, a policy decision was adopted by the respondents to promote certain employees as Anganwadi workers. The petitioners were accordingly promoted as the Anganwadi Workers on 05.01.2023 and 12.01.2023. Subsequently, it came to the notice of the

Director that various regional authorities have wrongly interpreted the aforesaid policy dated 03.01.2023 and many eligible candidates have been left out from the promotion. There was a massive feedback from the Anganwadi Workers/Helpers' Unions and their elected representatives. It was found that the Anganwadi Workers working for 14 to 15 years possessing good qualification have not been considered for promotion. It was found that the aforesaid promotion exercise suffers from various other irregularities.

4. In view of the aforesaid facts, the promotion orders of the petitioners have been withdrawn in order to re-consider the entire matter in a proper manner. A fresh notification streamlining the process of promotion has been issued on 07.02.2023 by the State Government. It has been provided that only the candidates having minimum 7 years experience shall be considered for promotion as Anganwadi Workers.

5. Heard the learned counsel representing the petitioners at length. He submits that the impugned orders have been passed without following the principles of natural justice. He submits that once the promotion orders have been passed under the existing scheme dated 03.01.2023, the respondents have no right to revert the petitioners.

6. On a Court question, the learned counsel representing the petitioner does not dispute the correctness of facts noticed in the order dated 08.02.2023. It is thus evident that the Director, Social Security and Women and Child Development Department, Punjab, has correctly noticed that a substantial number of eligible candidates have not been promoted and candidates with better educational qualifications and

working experience have been ignored due to irregularity in the promotion process and wrong interpretation of the said policy. In these circumstances, the question that arises for adjudication is, “As to whether the Court should set aside the order only on account of violation of the principles of the natural justice?”

7. In **State of U.P. vs. Sudhir Kumar Singh, 2020 SCC Online 847**, the Supreme Court has laid down five tests governing the application of the principles of natural justice which read as under:-

“(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.”

8. In the facts of the present case, this Court does not find it appropriate to set aside the order only on violation of principles of the natural justice, particularly when the factual position as noticed in the order dated 08.02.2023, is not disputed and if the order is set aside it will lead to miscarriage of justice as the promotion of the petitioners itself was a part of the flawed process that was a result of erroneous interpretation made by various authorities. The said order withdrawing petitioners’ promotion is a step taken by the Government to fix the errors that deprived many eligible candidates from being promoted to the post in question.

9. Hence, dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

14.02.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE