

135 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3463-2023 (O&M)

Date of decision: 20.02.2023

Sarbjit Kaur and another

....Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ravish Bansal, Advocate for the petitioners
Mr. R.S.Pandher, Sr.DAG, Punjab

ANIL KSHETARPAL, J (Oral)

Heard the learned counsel representing the parties at length.

An identical matter came up for hearing in CWP-3027-2023

titled as '**Neelam Rani and others vs. State of Punjab and others**' and

was dismissed on 14.02.2023 with the following order:-

“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.”*

The contention of the learned counsel representing the petitioner with regard to the applicability of the scheme as well as denial of opportunity of hearing has already been dealt with in the aforesaid case.

Keeping in view the aforesaid facts, the present writ petition is also dismissed in the same terms.

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

20.02.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE