

CM-19676-CWP-2023 in/and
CWP No. 11346 of 2019

2023:PHHC:155240

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CM-19676-CWP-2023 in/and
CWP No. 11346 of 2019
Date of Decision : 05.12.2023

Ravi Prakash

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajeev Anand, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-19676-CWP-2023

Present application has been filed for recalling the order dated 06.11.2023, by which, the present petition was dismissed for non-prosecution.

Notice of the application to the counsel opposite.

Mr. Pankaj Middha, learned Additional Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondents. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which is duly supported by an affidavit, coupled with the fact that learned

counsel for the respondents has not objected to the relief as prayed in the present application, the same is allowed. The order dated 06.11.2023 is recalled and the writ petition is restored to its original number and status.

CWP-11346-2019

1. In the present petition, the challenge is to the order of the respondents dated 11.04.2019 (Annexure P-9) by which the date of promotion of the petitioner as Sub Divisional Clerk and Accounts Clerk have been changed to his detriment.

2. Learned counsel for the petitioner has raised a single argument that no order, which causes prejudice to an employee can be passed without giving an opportunity of hearing and in the present case, had the opportunity of hearing been given to the petitioner, the petitioner would have raised an issue that grant of benefit of promotion to Shakuntala Devi over and above the petitioner is not permissible in the facts and circumstances of the present case keeping in view the rules governing the service as there are two different cadres i.e. Field Cadre and Head Quarter and the petitioner and Shakuntala Devi were working in different cadres.

3. Learned State counsel concedes the factum that the impugned order has been passed without giving any opportunity of hearing to the petitioner or even giving show cause notice.

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

5. 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.”

6. Keeping in view the above, the impugned order dated 11.04.2019 (Annexure P-9) cannot sustain in the eyes of law and is accordingly set-aside.

7. Learned State counsel submits that as the impugned order has been passed on the basis of the technicality, the department be given liberty to pass a fresh order. It is a settled principle of law that when the writ petition is not being decided on merit keeping in view the claim being raised by the petitioner, the respondents have jurisdiction to pass a fresh order in accordance with law, hence, merely that the impugned order has been set-aside, will not be an impediment for the department to pass a fresh order on the same cause by observing due process of law.

8. It may be noticed that by this order, the benefit of promotion given to the private respondent is not being withdrawn but in case respondent-department intend to pass any order affecting respondent No. 3, Smt. Shakuntala Devi be also given due opportunity of hearing.

9. Disposed of.

December 05th, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No