

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

209

CWP-12939-2015
Decided on : 22.11.2023

Ram Parshad

. . . Petitioner

Versus

State of Haryana and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Surender Pal, Advocate
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, the grievance of the petitioner is that vide order dated 23.08.2014, copy of which has been appended as Annexure P-11, the pay of the petitioner has been re-fixed in the cadre of the Lab Attendant by withdrawing the earlier order passed in favour of the petitioner dated 25.07.2011 (Annexure P-5) as well as re-fixation of his salary as done vide order dated 05.08.2011 (Annexure P-8).

2. Learned counsel for the petitioner argues that the petitioner was appointed on Class IV post of peon on 09.03.1986. Another employee namely Om Parkash was appointed in the Class IV cadre on 28.02.1987. As Om Parkash was belonging to the reserved category of Scheduled Caste, on the basis of the reservation, he was granted further promotion as Lab Attendant on 23.08.1990, which promotion was extended to the petitioner according to his own seniority on

29.11.1997. Learned counsel submits that the petitioner caught Sh. Om Parkash in the cadre of Lab Attendant, meaning thereby that he again regained his seniority in the cadre of Lab Attendant and also became entitled for the salary which Om Parkash was getting. In order to give the said benefit, the respondents passed an order dated 25.07.2011 (Annexure P-5), by which the date of the promotion of the petitioner as a Lab Attendant was also deemed to be given w.e.f. 23.09.1990 i.e. from the date Sh. Om Parkash was given the said promotion and he was also given all the consequential benefits such as seniority, fixation of pay etc. but arrears of the pay was only to be admissible from the date, he actually worked as a Lab Attendant i.e. 29.11.1997.

3. Consequent to the order dated 25.07.2011 (Annexure P-5), the pay of the petitioner was also re-fixed vide order dated 05.08.2011, copy of which has been appended as Annexure P-8.

4. The said benefit was allowed to be continued with the petitioner when vide impugned order dated 23.08.2014, without giving any opportunity of hearing, the benefit which was extended to the petitioner vide Annexure P-5 as well as as Annexure P-8, the same was withdrawn in order to re-fix the salary of the petitioner once again in the cadre of the Lab Attendant. The said order dated 23.08.2014 is under challenge in the present petition.

5. Learned counsel for the petitioner submits that once a detailed order was passed granting the petitioner the promotion to the post of Lab Attendant from the date, person junior to the petitioner was granted i.e. Om Parkash and the petitioner was also given the consequential fixation of salary, the same could not have been withdrawn later after a period of 3 years of grant of the same and that too without giving any show cause notice to the petitioner.

6. Learned counsel submits that the said order is liable to be set aside as the same has been passed violating the rules of natural justice.

7. Learned State counsel submits that the petitioner had been granted the benefit of three financial up-gradations, hence, his salary could not have been fixed equivalent to Om Parkash but concealed the fact that the order dated 23.08.2014 (Annexure P-11) was passed without giving any show cause notice to the petitioner.

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

9. It is a settled principle of law that no order can be passed which causes civil consequences such as financial reduction or recovery of the amount and the same cannot be passed without giving appropriate opportunity to defend qua the said proposal.

10. As per the 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, it was held 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.”

11. 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.”

12. From the perusal of the abovesaid principle of law, it can be very well said that in case any order causing prejudice to an employee is to be passed, opportunity of hearing is a must, which process is missing in the present case as the salary of the petitioner has been reduced by withdrawing an earlier order granting the same benefit and by re-fixing the salary and that too without giving any opportunity of hearing to the petitioner. Even the recovery has been made from the petitioner without giving any opportunity to him. Hence, not only the order re-fixing the salary, copy of which has been appended as Annexure P-11 dated 23.08.2014, is set aside but even the recovery which has been done in pursuance to the said order is also set aside being contrary to the settled principle of law. Further, the argument which has been raised by learned counsel for the respondent is that the petitioner has been granted three upgradations, hence, his salary could not have been stepped up equivalent to his junior Om Parkash, it may be noticed that in the present case, the petitioner is not claiming a step up of his pay but was claiming that after the promotion to the post of Lab Attendant, the petitioner again became senior to Om Parkash as he was superseded by Om Parkash earlier on the basis of representation and in view of the judgment of the Hon'ble Supreme Court of India in ***Ajit Singh Januja and others Vs. State of Punjab and others, 1996(2) SCC 715***, petitioner is to be treated as senior to Om Parkash in the cadre of Lab Attendant, hence, the grant of upgradation will have no relevance in the facts and circumstances of the present case. Therefore, the

argument on the basis of which the respondent actually re-fixed the salary of the petitioner is not applicable in the facts and circumstances of the present case.

13. At this stage, learned counsel for the respondent submits that as the present order is being passed on the basis of the technicality, fresh opportunity is being given to the respondents to pass appropriate order.

14. This prayer has to be considered in view of the fact that petitioner has already retired from the service in March 2015 i.e. approximately 8 years ago. Further, the present order is not being passed only on the basis of technicality of violation of the rules of natural justice but even rejecting the ground, which has been taken by the respondents to reduce the salary, as the impugned order is being held to be invalid as the reasons given for the reduction of the pay are not applicable in the facts and circumstances of the present case. Therefore, no fresh opportunity is liable to be given to the respondents to disturb the salary of a retired employee that too after a period of 8 years of retirement.

15. The writ petition is allowed as prayed.

16. The re-fixation of salary is set aside. The recovery made from the petitioner is also directed to be refunded to him. Further, the retiral benefit of the petitioner will be re-assessed on the basis of the salary which the petitioner will get upon setting aside of the impugned order and the difference in the retiral benefits as well as in the salary be also paid to the petitioner within a period of 2 months.

17. As the order, Annexure P-11 was bad in law and the petitioner was restrained from using the amount, the petitioner is also held entitled for the interest @ 6% on the amount which will be given to the petitioner keeping in view the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs.***

State of Haryana, 2014(13) RCR (Civil) 355 according to which, in case, any amount belonging to an employee has been retained by the department and used, the employee will be entitled for interest. Hence, all the arrears which the petitioner will be held entitled for, will also carry 6% interest from the date, the said amount became admissible to the petitioner upto the date when the actual amount is paid to the petitioner.

(HARSIMRAN SINGH SETHI)
JUDGE

22.11.2023
Mehak

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No