

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16616-2022
Date of decision: 12.10.2023

Shivraj Singh*Petitioner*

V/s

State of Punjab and others
...*Respondents*

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. L.S. Mann, Advocate
for the petitioner.

DEEPAK MANCHANDA J. (ORAL)

The instant petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing of the impugned order dated 29.08.2018 (Annexure P-5) passed by respondent No.3 vide which respondent No.3 had stopped one annual increment of the petitioner with future effect and further for quashing the order dated 13.05.2020 (Annexure P-6) vide which the review application filed by the petitioner has been dismissed by respondent No.3 and for quashing of the order dated 09.06.2022 (Annexure P-9) passed by respondent No.4 though addressed to respondent No. 2 vide which the appeal of the petitioner was dismissed.

The brief facts emanated from the petition are that the petitioner was appointed in the Head Office of Directorate of Land Record, Punjab as Computer Lab Assistant in the year 2007 by office order dated 25.10.2007 passed by respondent No.3. In the year 2009, the petitioner along with other persons was selected as Assistant System Manager and thus from the year 2007 till date, the

petitioner is working in the Department of Punjab Land Revenue Record Society and he has been discharging his duty honestly and the entire career of the petitioner has remained unblemished and he has even been awarded by the administration for his hard work on number of occasions. On 02.05.2018, the respondent No.4 issued show cause notice to the petitioner on the allegations that the petitioner had uninstalled Antivirus from Server at Farad Kendra on 24.01.2018 and reinstalled the same only on 30.01.2018 and thus he had violated the instructions contained in the Farad Kendra Manual 2016 and thus kept the server running without Antivirus for seven days and put the data base in danger. It was further alleged in the show cause notice that the petitioner had incurred unnecessary expenditure of PLRS by purchasing wifi routers on two occasions.

Learned counsel for the petitioner contends that reply to the said show cause notice was submitted clarifying the circumstances under which Antivirus was uninstalled and further the petitioner also took a specific stand that no loss has ever occurred due to the uninstalling of the Antivirus

The respondent No.3 without having gone through the reply to show cause notice of the petitioner and by observing that the petitioner has breached the security of server by uninstalling the Antivirus and further by observing that complaints have been received against the petitioner for using foul language against the higher officials and also for interfering in the work of Farad Kendra and for violating the discipline stopped one annual increment of the petitioner with future effect and passed the order dated 29.08.2018 (Annexure P-5).

Learned counsel further contends that the petitioner filed review application but the said review application was also dismissed by respondent No.4 vide order dated 13.05.2020 (Annexure P-6). Thereafter, the petitioner filed

29.08.2018. It is relevant to mention here that the said appeal had been filed in the year 2020 but till June 2022, the said appeal could not be decided and consequently, the petitioner moved an application to Chief Minister Punjab. The respondent No.2 instead of deciding the appeal himself referred the said appeal again to respondent No.4 and respondent No.4 consigned the application to record room while passing a totally non speaking order dated 09.06.2022 (Annexure P-9).

Vide order dated 05.07.2023, the State counsel was directed to have instructions with regard to competency of respondent No.2 to hear the appeal i.e. Annexure P-7 filed by the petitioner which was neither decided nor rejected on the ground of maintainability and it was also directed that who would be the competent authority to hear the grievances of the petitioner, the matter was adjourned to 20.07.2023 on the request of learned State counsel to complete his instructions.

Vide order dated 08.08.2023 in compliance of the order dated 05.07.2023, learned State counsel submitted that the Financial Commissioner, Revenue-cum-Vice Chairman-respondent No.2 is the competent authority who deals with the grievances of the petitioner and submitted that the appeal filed by the petitioner was already rejected vide order dated 31.05.2022 and vide letter dated 09.06.2022 (Annexure P-9) the same had been communicated to the petitioner. However, petitioner disputed the said fact and submitted that order dated 31.05.2022 was never received by the petitioner. Accordingly, learned State counsel sought time to place on record the copy of the order dated 31.05.2022 as well as for supplying the same to the learned counsel for the petitioner.

Notice of motion.

On asking of the Court, Mr. Arun Gupta, AAG Punjab, who is present in the Court, accepts notice on behalf of respondents and filed short reply by way of an affidavit of Aaditya Gupta, Joint Member Secretary, Punjab Land Records Society, Jalandhar dated 05.10.2023 before this Court, mentioning therein that after consideration and going through the record, the appeal filed by the petitioner has been filed vide order dated 31.05.2022 of the Financial Commissioner Revenue-cum-Vice Chairman, Punjab Land Records Society.

I have heard learned counsel for the parties at length and gone through the record of the case.

After perusing the material on record including the grounds of appeal (Annexure P-7) as well as the impugned order dated 29.08.2018 (Annexure P-5) the Appellate Authority dismissed the appeal without indicating any reasons which prevailed with it for rejecting the points raised in the appeal. This Court has perused the relevant extract of the noting sheet of file of the petitioner which has been annexed with the affidavit dated 05.10.2023 as Annexure R-1 (translation of relevant extract of the office file dated 31.05.2022) vide which the appeal of the petitioner stand filed/decided and thereafter, communicated through impugned order dated 09.06.2022 (Annexure R-2) which is already annexed with the petition as Annexure P-9 and is of the view that neither Annexure R-1 nor Annexure P-9/R-2 can be treated as valid speaking order in the eyes of law.

The petitioner has weight in his arguments saying that the impugned order dated 09.06.2022 is totally a non-speaking and indicates that there is a clear non-application of mind to the issues raised by the petitioner which have not been dealt with while passing the impugned order. It really surprises that in a statutory appeal in which questions, both on fact and law were debatable and wherein

though the reference of application dated 08.06.2020 and reminder dated 29.09.2021 has been made and proposal was there that a personal hearing can be given to the petitioner before disposing of said applications, despite that a totally a non-speaking order, bereft of any reasoning came to be passed i.e. impugned order dated 09.06.2022.

It is the settled proposition of law that even quasi-judicial orders have to contain reasons for reaching at the conclusion. Order dated 09.06.2022 (Annexure P-9) thus, lacks the very essentials of judicial or quasi-judicial orders for want of reasons and the same deserves to be set aside.

Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in case titled as "**M/s Kranti Associates Pvt. Ltd. & Anr. Vs. Sh. Masood Ahmed Khan & Others**" reported as **2010(3) SCC (Civil) 852**, in which it has been held as under:-

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51. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. A quasi-judicial authority must record reasons in support of its conclusions.*
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasijudicial or even administrative power.*
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- g. Reasons facilitate the process of judicial review by superior Courts.*
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- j. Insistence on reason is a requirement for both judicial accountability and transparency.*

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

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Reference may also be made to the judgment of the Hon'ble Division

Bench of this Court in case titled as ***"Banarsi Das Cotton Mills (P) Ltd. v. State of Haryana and another"***, reported as 1997(1) PLR 17, in which, it has been held as under:

“xxx xxx

3. Although the impugned order/notice has been challenged on various grounds, we are of the opinion that the same is liable to be quashed on the short ground it does not contain reasons. There can be no manner of doubt that while deciding the appeal the Higher Level Screening Committee acts as a quasi judicial authority and it is duty bound to record reasons in support of its decision. The recording of reasons and communication thereof is imperative for compliance of the principles of natural justice which must inform the proceedings of every quasi judicial body and even in the absence of a statutory provision or administrative instructions requiring recording of reasons in support of the orders, the quasi judicial authority must pass speaking orders so as to stand the test of scrutiny.

4. In Testeels Ltd. v. N.M. Desai, Conciliation Officer, A.I.R. 1970 Gujarat 1 (F.B.). Full Bench of the Gujarat High Court held that the jurisdiction of the High Court under Article 226 and that of the Supreme Court under Article 136 of the Constitution of India cannot be stultified by administrative authorities by passing non-speaking orders.

5. The requirement of recording of reasons and communication thereof by quasi judicial authorities has been emphasised in several judgments of the Supreme Court including a Constitution Bench Judgment in S.N. Mukherjee v. Union of India, A.I.R. 1990 S.C. 1984.

6. Similar view has been expressed by a Division Bench of this Court in *C.W.P. No. 10769 of 1995 (Haryana Cotton Mills P. Ltd. Tohana v. State of Haryana and Ors.)*, decided on 8.12.1995.

7. In view of the above legal position, we quash the rejection of the petitioner's appeal by the Higher Level Screening Committee and direct that Higher Level Screening Committee shall reconsider the appeal filed by the petitioner and pass a fresh order after giving opportunity of hearing to the petitioner. The High Level Screening Committee is further directed to decide the appeal afresh by passing a reasoned order within a period of one month after issuing notice to the petitioner for a specific date of hearing, on receipt of a copy of this order. The registry of this Court is directed to send a copy of this order to respondent No. 2.

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The impugned order dated 09.06.2022 has been passed without taking into consideration the objections raised by the petitioner. Since no reason has been given while rejecting the appeal, the said impugned order is passed in violation of principles of natural justice and is not sustainable.

The impugned order dated 09.06.2022 (Annexure P-9) is quashed. The present case is remanded back to the Appellate Authority i.e., respondent No.2 to decide the appeal afresh. It is needless to say that the petitioner shall be heard in person. He is permitted to state his case. The appeal shall be decided expeditiously and till then no further recovery shall be effected from the petitioner till decision of the appeal.

12.10.2023
Sapna

(DEEPAK MANCHANDA)
JUDGE

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