

CWP-13253-2018

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2023:PHHC: 126623

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

CWP-13253-2018

Date of decision : 18.08.2023

Sohan Lal

...Petitioner

Vs.

**Special Secretary Cooperation (Appeals),
Punjab Mini Secretariat, Chd and others**

...Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Manjit Singh, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

Mr. Arun Gosain, Advocate and Ms. Swati Arora, Advocate
for respondent No.3.

DEEPAK MANCHANDA, J.

1. By means of this writ petition filed under Article 226 Constitution of India petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 15.03.2018 (Annexure P-7) passed by respondent No.1 as well as the order dated 28.10.2016 (Annexure P-5) passed by respondent No.2, whereby appeal moved by him was dismissed. Further prayer is for quashing the order dated 05.09.2016 (Annexure P-4) passed by respondent No.3, whereby services of the petitioner were terminated and he was advised to deposit an amount of Rs.4,21,562/- on account of loss caused due to his negligence.

2. The facts in brief leading to the present writ petition are that on 07.03.1986, petitioner joined as a Refrigeration Plant Operator in Cooperative

Milk Producers Union Ltd. Verka Milk Plant, Sangrur, which was registered under the Punjab Cooperative Society Act, 1961 and later on was promoted as a Refrigeration Foreman on 14.01.2014. It has been alleged that Mr.S.S.Gill, General Manager of the Milk Plant harassed the petitioner and had passed a recovery order dated 13.05.2016 on the pretext of wrong fixation of pay, the said order was challenged by the petitioner by way of filing CWP-10774-2016, wherein this Court stayed the recovery and later on said recovery order was withdrawn. Due to vindictiveness, said General Manager of the Milk Plant placed the petitioner under suspension and issued charge sheet dated 07.06.2016 (Annexure P-1) for causing loss to the organization due to his negligence. Pursuant to the issuance of charge sheet, petitioner sent a reply dated 16.06.2016 (Annexure P-2) and denied the charges levelled against him. On 21.06.2016, without considering the reply of the petitioner, enquiry officer was appointed, who completed the enquiry without giving any opportunity to the petitioner to defend his case, presented the inquiry report dated 02.08.2016 (Annexure P-3). Petitioner filed a detailed reply on 31.08.2016, however, the said inquiry report was accepted by the General Manager on 05.09.2016 (Annexure P-4) thereby terminates the petitioner from service and a recovery of Rs.4,21,562/- was also imposed upon him. Aggrieved against the said order (Annexure P-4), petitioner moved an appeal before the respondent No.2, however, the same was dismissed on 28.10.2016 (Annexure P-5) affirming the order passed by respondent No.3. Thereafter, petitioner preferred a revision petition under Section 69 of Punjab Cooperative Societies Act, 1996 for quashing the order dated 28.10.2016 (Annexure P-5), vide which petitioner's appeal was dismissed and also the order dated 05.09.2016 (Annexure P-4),

whereby petitioner was terminated from the service, however, vide order dated 15.03.2018 (Annexure P-7) passed by respondent No.1, the revision petition has also been dismissed. Hence this writ petition.

3. Learned counsel for the petitioner contends that the services of the petitioner are governed by Common Cadre Rules, 1996 and Punjab Punishment and Appeal Rules, 1970, as per which the competent authority shall give a notice to the concerned employee to afford him an opportunity to represent within 15 days, but respondent No.3 did not comply the rules and failed to give any notice to the petitioner in this regard. Therefore, order passed by the General Manager is not sustainable. Further, the order passed by the appellate authority is non-speaking order, therefore, he prays that the interference by this Court is warranted under Article 226 Constitution of India.

4. Vide order dated 24.05.2018, notice of motion was issued on the ground that the appeal filed by the petitioner against the punishment order of dismissal has been dismissed without recording any reasons and the revisional authority has not considered and raised aspect.

5. While opposing the prayer of the learned counsel for the petitioner, learned counsel for the respondent No.1-State refers to the reply dated 02.08.2018 to contend that the impugned orders passed by the answering respondent was passed as quasi judicial authority and is in consonance with law. He prays for dismissal of the same.

6. Learned counsel appearing on behalf of respondent No.3 contends that petitioner was placed under suspension vide order dated 27.05.2016 and the inquiry officer was appointed after considering the reply of the petitioner. It is also stated in the written statement that inquiry officer accepted the request

of the petitioner to take assistance of co-worker, but when petitioner named a person who was not a co-worker in the plant, the same was not accepted and full opportunity was given to the petitioner to defend himself in the inquiry but he failed to prove that the charges levelled against him were not based on facts and another opportunity was also given to the petitioner to cross-examine the witnesses of the management, therefore, it is clear that the inquiry was conducted after giving full opportunity to the petitioner and by following the procedure. He prays that writ petition filed by the petitioner be dismissed.

7. I have learned counsel for the parties and have gone through the case file carefully.

8. It is the settled proposition of law that even quasi-judicial orders have to contain reasons for reaching at the conclusion. The order dated 28.10.2016 (Annexure P-5) thus, lacks the very essentials of judicial or quasi-judicial orders for want of reasons and the same deserves to be set aside.

9. 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,

quasijudicial 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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10. 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:

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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 bond 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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11. After perusing the impugned order dated 28.10.2016 (Annexure P-5) passed by respondent No.2 i.e. the appellate authority, this Court does not hesitate in observing that respondent No.2 whose duty was to record justified reasons in support of its conclusion which could serve the wider principle of justice. Respondent No.2 being a quasi judicial authority was therefore, required to adjudicate the case after considering the facts of the case. The impugned order does not disclose any application of mind at the hands of respondent No.2 in terms of the reasons having been mentioned in the same, if the same would have been done, the same could have reflected into ensuring the observance of the rule of law which could have minimize the arbitrariness in the decision taken by the respondent No.2. Such exercise has not been undertaken by respondent No.2 in the facts of the present case.

12. The impugned order dated 28.10.2016 (Annexure P-5) 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, and the same is liable to be set aside and therefore, the subsequent order dated 15.03.2018 (Annexure P-7) passed in the revision petition is also liable to be set aside.

13. Keeping in view of the above said facts and circumstances and also the law laid down in the above cited judgments, the present writ petition is allowed and impugned orders dated 28.10.2016 (Annexure P-5) and 15.03.2018 (Annexure P-7) are set aside. The present case is remanded back to the appellate authority 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 within four months from the receipt of certified copy of this order and no further recovery shall be effected from the petitioner till decision of the appeal.

14. Accordingly, the present petition is disposed of.

(DEEPAK MANCHANDA)
JUDGE

18.08.2023

vanita	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No