

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4174 of 2016 (O&M)
Date of decision: 14.03.2023

Pawan Kumar

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Goyal, Advocate
for the petitioner.

Mr. D.K.Singal, Addl.A.G., Punjab

ANIL KSHETARPAL, J(Oral)

1. The petitioner prays for the issuance of a writ of certiorari to quash the orders passed on 10.07.2013 and 25.02.2016 along with a writ in the nature of mandamus to direct the respondent-authorities to allow the petitioner to continue to perform the duties in the office of the State Transport Commissioner as per the order dated 30.11.2012.

2. The petitioner was appointed as a Steno-typist in the Punjab Roadways which is managed by an autonomous body. However, he was appointed by way of transfer in the office of the State Transport Commissioner. Subsequently, on realizing that while ordering appointment by transfer of the petitioner, the procedure as prescribed in the instructions which provides for the circulation of the post has not been followed by the department, he was sent back to the Corporation. The petitioner filed a representation in which the Principal Secretary initially granted stay, however, subsequently, confirmed the order passed by the Secretary, Government of Punjab, Transport Department, on 10.07.2013.

3. This writ petition has been filed challenging the correctness of the aforesaid two orders passed by the Secretary, Government of Punjab, Transport Department and the Principal Secretary, Government of Punjab, Transport Department.

4. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book

5. The learned counsel representing the petitioner contends that the impugned orders suffer from three basic flaws, namely, (1) the order previously passed by the Secretary on 19.06.2013, while appointing the petitioner by way of transfer in the office of District Transport Officer, Amritsar, on deputation basis could not be reviewed by the officer posted subsequently to him; (2) the impugned orders could not be passed without granting an opportunity of hearing to the petitioner, as it defies the laws of natural justice; (3) the respondents have permitted transfer of Sh. Hira Singh and Sh. Naresh Kumar Kaler vide orders dated 10.10.2016 and 03.01.2017 which is also an appointment is made by way of transfer.

6. On the other hand, the learned State counsel relying upon the instructions dated 22.11.1977 submits that the appointment by way of transfer is permissible in the concerned department, however, the instructions dated 22.11.1977 provides that such appointment by way of transfer can be offered only after the post is circulated in the various offices. Whereas in the present case, the petitioner was appointed in violation of the aforesaid instructions as the post was not circulated to the various offices.

7. This court has considered and analyzed the arguments of the learned counsels representing the parties and perused the record.

8. It is not the case of the petitioner that while appointing him by way of transfer, the procedure as prescribed in the instructions issued on 22.11.1977 was followed. In such circumstances, the questions that remain to be adjudicated are: the entitlement of the authority to review and the violation of the principles of natural justice. The decisions related to transfer are wholly administrative in nature. These are not the quasi-judicial orders which require a statutory provision to enable the authority to review its own orders. Once it came to the notice of the competent authority that the petitioner has been appointed by way of transfer in infringement or violation of the mandatory procedure laid down for transfer, there was no bar or arbitrariness in sending the petitioner back to his parent-Corporation.

9. As regards the argument of the learned counsel with reference to the violation of the principles of natural justice, it may be noticed that such infringement itself cannot be made the sole basis to reverse the order unless some prejudice is apparent on the face of the decision. This court has granted fair hearing to the petitioner. Recently, in para 39 of the judgment passed in **State of U.P. vs. Sudhir Kumar Singh, 2020 SCC Online 847**, the Hon'ble Supreme Court has held that the violation of the principles of natural justice is a flexible tool in the hands of the court to do substantive justice between the parties so that rights of both the parties are taken care of while dispensing justice. Mere technical error cannot be made a ground to set aside an otherwise valid order. The relevant part of the discussion is extracted 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.”*

10. The petitioner while filing the replication has annexed the orders of Sh. Hira Singh and Sh. Naresh Kumar Kaler in support of his submissions. If those appointments have been made in violation of the mandatory procedure laid down for the matters related to intra-departmental transfers, the petitioner can always file a representation before a competent authority. However while invoking the doctrine of equality, the court cannot allow the illegalities to be perpetuated which are apparent on the face of it.

11. Keeping in view the aforesaid facts and discussion, no ground to interfere.

12. Dismissed.

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

March 14, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*