

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-6883 of 2015 (O&M)

Reserved on : 09.01.2023

Date of decision:17.01.2023

Parveen Kumar Bhardwaj

..Petitioner

Versus

State of Punjab and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with  
Mr. Suvir Sidhu, Advocate,  
for the petitioner.

Mr. Mohit Kapoor, Addl.A.G., Punjab.

Mr. Rajiv Atma Ram, Sr. Advocate, with  
Mr. Ranjit Singh Kalra, Advocate  
Ms. Sanah Sahni, Advocate  
for respondent no.2.

Respondent no.3 proceeded ex parte  
vide order dated 02.07.2015.

**ANIL KSHETARPAL, J(Oral)**

1. In my considered opinion, the following questions require  
adjudication:-

- (1) Whether the State Government has the enabling power to  
reinstate an employee in the service of an autonomous  
organization particularly when under the Pharmacy Act,  
1948 its prior approval is required only at the time of  
appointment?
- (2) Whether the applicability of the principles of natural  
justice can be extended to perpetuate a fraudulent order  
of reinstatement of an employee passed by an authority

who had no jurisdiction?

2. In order to understand the controversy involved, the relevant facts, in brief, are required to be noticed which are as follows:

The petitioner prays for the issuance of a writ in the nature of certiorari to quash the order dated 25.03.2015 issued by the Punjab Government which reads as under:-

*“Earlier order no.6/17/2008-3HB3/8696-8704 of 24/12/13 wherein Sh. P.K.Bhardwaj was appointed as Registrar are cancelled. Joint Director in office of Directorate Medical Education and Research is given the charge of Registrar Punjab State Pharmacy Council till next orders.*

*These orders are issued with the approval of competent authority.”*

3. Originally, the petitioner was appointed as a Pharmacist in the Department of Health and Family Welfare, Punjab. Subsequently, on 26.07.2001, he was appointed as a Registrar in the Punjab State Pharmacy Council. Later on, vide order dated 14.11.2008, he was repatriated to his parent department on account of complaints. He filed a Civil Writ Petition No.19961 of 2008 which was dismissed as withdrawn on 10.03.2009. Again, a fresh Civil Writ Petition No.4716 of 2009 filed by him was withdrawn on 10.09.2009 to persuade the Government at ministerial level. He did not report on duty. To inquire into the complaints against him, a regular departmental inquiry was initiated. After serving charge-sheet through registered post but failing to get any response from the petitioner, the Enquiry Officer was appointed. Despite repeated communications, he did

not come forward and join the inquiry. On 23.09.2010, the Enquiry Officer submitted a report in which the charges against the petitioner were reported to have been proved. A show cause notice was issued to the petitioner but no reply was filed. The Pharmacy Council vide order dated 31.03.2011 terminated the petitioner from service. As per the reply filed by the State of Punjab, the petitioner assailed the correctness of the termination order by filing a writ petition which was withdrawn in order to avail the remedy of approaching the Government. A detailed representation submitted by the petitioner questioning the correctness of the order of termination was rejected by the Government on 06.09.2012. It was held that the termination of the petitioner from service was just and proper. On 27.12.2012, the Minister re-examined the matter and upheld the order.

4. The petitioner, once again, submitted a representation dated 14.10.2013 to the Minister. The office recommended that the representation of the petitioner should be rejected. Despite such recommendations, the Minister directed the petitioner's reinstatement in service and posting as the Registrar of the Pharmacy Council. The order passed by the Minister has been reproduced at page 255 of the paper book which is extracted as under:-

*“PSHER*

*MERM. In view of the facts stated at X NP.57 Sh.*

*Bhardwaj be reinstated & posted as Registrar PSPC.*

*Sd/-  
10/12”*

5. Pursuant thereto, on 24.12.2013, the Principal Secretary issued an order under Section 26 of the Pharmacy Act, 1948 granting approval to the decision of appointing the petitioner as the Registrar of Pharmacy

Council and accordingly the petitioner was permitted to join. However, subsequently, detailed facts were brought to the notice of the Minister. On 12.12.2013, the Minister has passed the following order:-

*“After considering the entire matter, it is found that large number of allegation against Shri Parveen Kumar Bhardwaj stand established. The Pharmacy Council has suffered a great monetary loss. As per the speaking order passed after enquiry, it has been found that the charges against the delinquent official stand proved. As such reinstatement of the delinquent official as Registrar of the Pharmacy Council, would not be in public interest.*

*Sd/- Chuni Lal Bhagat  
Minister, Medical Education & Research  
27.12.2013”*

6. On the basis of aforesaid observations, the impugned order has been passed. This writ petition has been filed to challenge the correctness thereof. Detailed written statements as well as affidavits have been filed by the parties.

7. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book along with the written notes of the arguments submitted by them.

8. The learned Senior Counsel representing the petitioner contends that the order dispensing with the petitioner's service is not only against the principles of natural justice but is also a totally non-speaking order. He submits that the petitioner's service cannot be terminated without following the principles of natural justice. He further contends that in the year 2012, the services of the petitioner were not dispensed with by the

competent authority i.e. the entire body of the Council but the order was passed by the Executive Committee. He further submits that once the Government had decided to reinstate the petitioner as the Registrar of the Punjab Pharmacy Council, then, in the absence of any specific enabling power of review, the aforesaid order could not be reviewed.

9. On the other hand, the learned senior counsel representing the Punjab Pharmacy Council while drawing the attention of the Court to the provisions of the Pharmacy Act, 1948, submits that the Government has no enabling power to direct reinstatement or appointment of the Registrar. He further submits that the order passed by the Minister on 10.12.2013 was not only a result of concealment of material facts but was also procured fraudulently by the petitioner. Hence, subsequently, the Minister had correctly cancelled the same. He further submits that the application of principles of natural justice cannot be extended to perpetuate the implementation of an order which was not only passed without jurisdiction but was also obtained by fraud.

10. This court has carefully analyzed and evaluated the arguments of the learned counsels representing the parties.

11. At the outset, it is important to note that Punjab Pharmacy Council is a creation of The Pharmacy Act, 1948 which, in turn, provides for the constitution of a Pharmacy Council in each State. Section 22 of the 1948 Act provides that every State Council shall be a **body corporate** by such name as may be notified by the State Government in the official Gazette. Section 26 of the 1948 enables the State Council to appoint its Registrar with the previous sanction of the State Government which is extracted as under:-

*“26. Staff, remuneration and allowances.—The State Council may, with the previous sanction of the State Government,—*

- (a) appoint a Registrar who shall also act as Secretary and, if so decided by the State Council, Treasurer, of the State Council;*
- (b) appoint such other officers and servants as may be required to enable the State Council to carry out its functions under this Act;*
- (c) fix the salaries and allowances and other conditions of service of the Secretary and other officers and servants of the State Council;*
- (d) fix the rates of allowances payable to members of the State Council:*

*Provided that for the first four years from the first constitution of the State Council, the Registrar shall be a person appointed by the State Government, who shall hold office during the pleasure of the State Government.”*

12. It may be noted here that the learned senior counsel representing the petitioner has failed to draw the attention of the Court to a provision in the Act or the Rules enabling the State Government to order appointment or reinstatement of the Registrar of the State Pharmacy Council. As per proviso to Section 26 of the 1948 Act, the State Government has the power to appoint the Registrar of State Council only for the first four years from its constitution. In other words, the State Government has the enabling power to appoint the first Registrar only.

13. With respect to the argument based on the applicability of the principles of natural justice, it may be noted that although, no doubt, while subsequently recalling its order, the Minister or the Government never gave an opportunity of hearing to the petitioner, however, in the facts of the present case, that by itself is not sufficient to set aside the impugned order particularly when the order of reinstatement of the petitioner passed by the Minister was without jurisdiction for more than one reasons. First of all, the State Government or the Minister had no enabling power to order reinstatement or appointment of the Registrar. Secondly, from the facts noticed above, it is evident that the order reinstating the petitioner was obtained by concealing the previous order passed by the Government on 06.09.2012 as well as 27.12.2012. The Minister, while ordering reinstatement, neither reviewed the previous orders nor he was apprised about the same. Thirdly, the principles of natural justice cannot result in perpetuating an order which was procured in a fraudulent manner particularly when it was passed beyond the enabling powers of the Minister. Recently, in para 39 of the judgment passed in **State of U.P. vs. Sudhir Kumar Singh, 2020 SCC Online 847**, the Supreme Court has laid down five tests governing the application of principles of natural justice which read 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.”*

14. If we test the facts of this case on the above parameters, it is evident that the petitioner's case fails. In any case, the petitioner has been granted an opportunity of hearing by this Court. Similar is the view expressed in *The Secretary/Correspondent, St. John's College & Others v/s Dr. S. Wilson & Others, 2020 18 SCC 752*. The requirement of passing a speaking order is also a facet of the principles of natural justice and fair trial.

15. Moreover, Section 26 of the 1948 Act only provides for obtaining the previous sanction of the State Government to enable the State Council to order appointment. However, such provision would not enable the State Government to order appointment particularly when the Punjab Pharmacy council being a body corporate is an autonomous body. The State Government is not the employer of the staff employed by the Pharmacy Council. It is only a sanctioning authority. Such provision for sanction does not result in conferring powers on the State Government to make appointments. A Division Bench of Gauhati High Court in *Prasanna Kumar Sarma vs. Government of Assam and others* (Writ Appeal No.29 of 2016, decided on 08.02.2016) examined the aforesaid issue in detail and it was held that in the matters of appointment to the post of Registrar, the powers of State Council cannot be superseded.

16. In the present case, the Minister has not ordered appointment but the reinstatement of the petitioner. In the absence of an enabling power in the Act or the Rules, the Minister had no jurisdiction to pass the order of reinstatement or appointment.

17. Moreover, it is crystal clear that the Minister was not apprised of all the facts. On previous occasion, the Minister had approved the

decision of the Council to dispense with the petitioner's services. Once the Government including the Minister had rejected the petitioner's representation on 06.09.2012 as well as on 27.12.2012, there was no occasion for review of the same. The reviewing order passed by the Minister was neither appropriate nor required.

18. It may be noted here that the attention of the court has not been drawn to any provision either in the Act or regulation or in the Rules, which enables the State Government to hear an appeal/representation or revision against the order passed by the State Council. Section 26 of the 1948 Act does not provide that the State Council, before dispensing with the services of its staff, is required to seek the prior or subsequent approval/sanction of the State Government. The attention of the Court has also not been drawn to any provision in the Act, Rules or Regulations, providing for maintainability of appeal/revision before the State Government. Hence, not only in the first round but also in the second round, the Government had no power to consider the representation against the decision of the State Pharmacy Council.

19. The next argument of the learned senior counsel representing the petitioner though attractive in the first blush, however, is found to be without merit on deeper scrutiny. First of all, the petitioner has not challenged the correctness of the decision dated 31.03.2011 of the Pharmacy Council. Secondly, as per the reply filed by the State, he had, previously, filed a writ petition. Thirdly, from a perusal of the order dated 31.03.2011, it is evident that the decision has been taken by the State Council and not by its Executive Committee. Section 27 of the 1948 Act provides for constitution of the Executive Committee, whereas, Section 19 of the 1948

Act provides for the constitution and composition of the State Council. Moreover, this writ petition has been filed in the year 2015, whereas, the decision to dispense with the petitioner's services was taken by the Council on 31.03.2011.

20. The next argument of the learned counsel representing the petitioner is with regard to the enabling power of the Government to review its previous orders. It is evident that the Government has not reviewed its previous decision through the Minister. It appears that when the Minister ordered the petitioner's reinstatement, he was oblivious of the fact that a previous order has been passed. As already noticed, such power does not vest with the Government. In such circumstances, the order passed by the Minister ordering reinstatement was beyond the provisions of the Act/ Rules and Regulations. Hence, it is non-est in the eyes of law.

21. Keeping in view the aforesaid discussion, the result is inevitable.

22. With the observations made above, the writ petition is dismissed.

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

17<sup>th</sup> January , 2023  
nt

(ANIL KSHETARPAL)  
JUDGE

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