

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(264)

RSA No. 1479 of 2021 (O&M)
Date of Decision : 31.01.2023

Food Corporation of India

...Appellant

Versus

Raj Singh Rathi

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.K. Gupta, Advocate for the appellant.

Mr. Shubham Saroha, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed challenging the judgment and decree of the trial court dated 04.01.2019 by which, the suit filed by the respondent-plaintiff challenging the order dated 07.03.2016, by which order, his pay was re-fixed, has been decreed in his favour as well as against the judgment of the lower appellate court dated 10.11.2021 by which, the judgment and decree of the trial court dated 04.01.2019 was upheld.

The brief facts of the case are that the respondent-plaintiff was given stagnation selection grade on 29.09.2009, which the respondent-plaintiff continued to get till he attained the age of superannuation on 31.05.2010. Thereafter, he was given the pensionary benefits keeping in view the last drawn pay. After six years of retirement, on 07.03.2016, the appellant-Corporation re-fixed the salary of the respondent-plaintiff unilaterally on the ground that the grant of stagnation selection grade given

on 29.09.2009 was bad keeping in view the facts and circumstances and the service history of the respondent-plaintiff. The said re-fixation of the salary was challenged by the respondent-plaintiff by filing civil suit. The said civil suit was allowed by the trial court on 04.01.2019 holding that the respondent-plaintiff had already retired from service on 31.05.2010 and the re-fixation of pay after a period of approximately 6 years after retirement, unilaterally by appellant-corporation and that too without giving any opportunity of hearing to the concerned employee i.e. the plaintiff is contrary to the settled principle of law and the said order was set-aside.

The appeal filed by the appellant-defendant against the order dated 04.01.2019 was also dismissed and the judgment of the trial court was upheld by the lower appellate court vide judgment dated 10.11.2021. Hence, the present regular second appeal.

Learned counsel for the appellant-defendant argues that the respondent-plaintiff was not entitled for the stagnation selection grade, which was granted to him on 29.09.2009 hence, the same was rightly withdrawn as the said order was void, hence, there was no requirement of grant of opportunity to the employee and the judgments of the courts below holding that no order causing prejudice to an employee can be passed without giving him opportunity of being heard, is not applicable in the present case and hence, the judgment of the trial court as well as of the lower appellate court is liable to be set-aside.

Learned counsel for the respondent-plaintiff argues that it has already come on record through evidence that the impugned order dated 07.03.2016 was passed unilaterally without giving any show cause notice so as to re-fix the salary, which is totally arbitrary and illegal and contrary to

the settled principle of law, there was no jurisdiction with the appellant-defendant to pass a unilateral order and that too after six years of the retirement of the respondent-plaintiff, the order dated 04.01.2019 passed by the trial court as well as order dated 10.11.2021 passed by the lower appellate court are perfectly valid and legal and are liable to be upheld.

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

It is a conceded position that the respondent-plaintiff retired on attaining the age of superannuation on 31.05.2010. It is also a conceded position that the post on which the respondent-plaintiff was working does not involve pension hence on the date of retirement, the master and servant relationship came to an end. It is a settled principle of law that no order causing prejudice to anyone can be passed without giving due opportunity of hearing. It is a conceded position that in the present case before passing the order dated 07.03.2016 so as to reduce the salary of the respondent-plaintiff so as to cause him prejudice, no opportunity/show cause notice was given to the respondent-plaintiff.

The law on the said issue is 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 that where any order passed by the authority concerned causes prejudice to an employee, especially financial liability, an opportunity of hearing must be granted 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.”

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.”

Learned counsel for the appellant-defendant has not been able to point out any perversity in the orders passed by the courts below either on facts or on law.

Keeping in view the above, no infirmity can be found qua the decision of the courts below in setting-aside the impugned order of re-fixation of salary dated 07.03.2016 being contrary to the settled principle of law.

No ground is made out for interference by this Court in the present regular second appeal.

Dismissed.

CM-5873-C-2021

As the main appeal has been dismissed, the present application also stands dismissed.

January 31, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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