

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-17706-CWP-2021 IN/AND
CWP-20048-2023 (O&M)
Decided on : 31.10.2023

Deepak Gautam and others

... Petitioners

Versus

State of Haryana and others

... Respondents

AND

CWP-10680-2023

Monu and others

... Petitioners

Versus

State of Haryana and others

... Respondents

AND

CWP-15631-2023

Vinod Kumar

... Petitioner

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Bhupinder Malik, Advocate
for the applicant-petitioner in CWP-20048-2023.

Mr. Sandeep Sharma, Advocate
for the petitioners in CWP-10680-2023.

Mr. Gurminder Singh Phull, Advocate for
Mr. Vineet Kumar Jakhar, Advocate
for the petitioner in CWP-15631-2023.

Mr. Pankaj Middha, Addl. AG, Haryana.
Mr. Tapan Yadav, DAG, Haryana.

Mr. Arvind Seth, Advocate
for the respondent-Haryana State Rural Livelihood Mission.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-17706-CWP-2023 IN CWP-20048-2023

Present application has been filed under Section 151 CPC read with Article 226 of the Constitution of India for preponement of the main case which is fixed for 22.01.2024.

Notice in the application.

Mr. Pankaj Middha, Addl. AG, Haryana accepts and states that he has no objection to the prayer made.

In view of the above, present application is allowed and main case is preponed and is taken up on Board today itself

Main Cases

1. By this common order, two petitions, which involve the same question of law on similar facts are being disposed of.
2. For the purpose of the present order, facts are being taken from CWP-10680-2023.
3. The grievance which has been raised by the petitioner(s) in the present petition is that by the impugned order dated 03.05.2023 (Annexure P-20), annual increment of 10% to 12.5% and benefits of allowances which have been duly approved by the principal employer have been withdrawn and that too without giving any opportunity of hearing to the petitioner(s).
4. As per the facts mentioned in the present petition, the petitioners are working in Haryana State Rural Livelihood Mission as a Block Cluster. The said mission is being financed 60% by the Government of India and 40% by the State of Haryana. The Executive Committee of the Society is the competent authority to

take decisions qua appointments to the post in question and to grant various benefits to the employees working in the Mission. The decision with regard to the service conditions are to be taken by the Executive Committee of the society and as per the decision of the Executive Committee of the society, which included the nominee of the Government of Haryana, certain benefits were extended to the employees including the allowances to be paid to the employees and also for the grant of annual increment @ 10% to 12.5%. The said benefits which were extended to the employees after the approval of the Executive Committee of the Mission have been withdrawn from the petitioners vide impugned order dated 03.05.2023 (Annexure P-20) on the ground that the Finance Department of the Government of Haryana has not accorded approval to the grant of the said benefit.

5. Though, the impugned order is being challenged on various grounds but only one ground has been pressed for consideration of this Court that once a benefit has already been approved by the Executive Committee of the Society and said resolution of the society has already been implemented and benefits have already been extended to the employees concerned, the same could not have been withdrawn without giving any opportunity to show cause against the proposed action of withdrawal of the benefits concerned, even if, said withdrawal was on account of non approval by the Department of Finance, Government of Haryana.

6. Learned State counsel submits that though, the nominee of the Government was there when the Executive Committee of the society has passed the resolution approving the grant of various allowances as well as annual increment of 10% to 12.5% but, once the funds are being raised to the Government of Haryana and the Government of Haryana had refused to grant the

approval for grant of said benefits, the same has been withdrawn from the petitioner though prospectively. Learned counsel for the respondent- Haryana State Rural Livelihood Mission submits that for withdrawal of any benefit prospectively, the notice is not required to be given to the petitioners. Rebutting the said argument, learned counsel for the petitioners submits that it is not a case of prospective withdrawal but the salary which is being paid to the petitioners has been reduced which cause prejudice to them. It is not that the petitioners will continue to get the salary which they were getting prior to the passing of the impugned order dated 03.05.2023 rather, after the impugned order was passed, the salary of the petitioners have been reduced which clearly shows that prejudice is being caused to the petitioner(s) keeping in view the order passed by the respondents withdrawing the benefits.

7. Learned State counsel submits that once the Government has granted the aid to the Institution where the petitioners are working, the Government has right to prescribe certain conditions with regard to the emoluments to be given to the employees, hence, declining of the approval by the Government of Haryana to the decision of the Executive Committee of the society dated 01.07.2016 (Annexure P-11) is perfectly valid and legal.

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

9. It is a settled principle of law that any executive order passed, which visits an employee with the penal consequences, an opportunity of hearing is must.

10. As per the settled principle of law 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 is must 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.”

11. 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.”

12. Keeping in view the above mentioned settled principle of law, no order causing prejudice to an employee can be passed without observing the rules of natural justice.

13. In the present case, it is a conceded position that the impugned orders have been passed without giving any opportunity of hearing to the petitioners. That being so, once the salary of the petitioners got reduced and prejudice is caused to the petitioners, opportunity of hearing was must before any order is passed against the petitioners. On this sole ground, the impugned order is set

aside.

14. At this stage, learned counsel for the respondents submits that respondents be given liberty to pass a fresh order in accordance with law.

15. As the impugned order is being passed on the basis of technicality of non-observation of the rules of natural justice, liberty is given to the respondents to pass appropriate order afresh in accordance with law after giving due opportunity of hearing to the petitioners and by considering all the objections which will be raised to the said proposal by the petitioners, by passing appropriate speaking order.

16. The writ petitions are allowed with the abovesaid terms.

17. Pending application, if any, be disposed of with the abovesaid order.

18. Photocopy of this order be placed on the files of other connected cases.

(HARSIMRAN SINGH SETHI)
JUDGE

31.10.2023
Mehak

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