

202

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24819-2022 (O&M)

Date of Decision : 09.08.2023

Anil Kumar

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sanjeev Sharma, Senior Advocate assisted by
Mr. Vikram Vir Sharda, Advocate
Mr. Mazlish Khan, Advocate
Mr. Sandeep Singh, Advocate & Mr. Jugansh Goyal, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

Ms. Neha Awasthi, Advocate
for respondent Nos.4 to 6.

Mr. R.K. Malik, Sr. Advocate with
Mr. Sachmeet Singh Randhawa, Advocate
for respondent No.7.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the order dated 08.09.2022, copy of which has been appended as Annexure P-28, by which the services of the petitioner has been terminated on the ground that the petitioner was appointed by way of direct recruitment as Assistant Director (Statistics) despite the fact that the petitioner did not had the requisite qualification and experience as required for the said post.

2. Learned Senior counsel for the petitioner submits that though the petitioner has brought to the notice of this Court, that he fulfilled all the required qualifications and it was only after verifying the same, the petitioner was appointed on the post of Assistant Director (Statistics) and, hence, not only the impugned order is bad qua the merit but even otherwise, the impugned order has been passed by violating the rules of natural justice as the petitioner was given a personal hearing in pursuance to the show cause notice issued to him by a particular Officer, whereas the impugned order has been passed by another officer without giving any opportunity of being heard to the petitioner. Learned Senior counsel further submits that the said question of law has already been settled by this Court in ‘CWP-357-2018’ titled as *‘Prabh Dayal Gabha Vs. Principal Secretary, State of Punjab Food Civil Supplies and Consumer Affairs Department and another’* decided on 28.01.2020 in the favour of the petitioner hence, the impugned order is liable to be set aside on this ground alone.

3. Learned State counsel keeping in view of the reply filed as well as the instructions which have been imparted to him during the hearing by the officer concerned who was present on behalf of the Department, concede the fact that the personal hearing in pursuance to the show cause notice issued to the petitioner was given by a particular officer, whereas the impugned order of terminating his services has been passed by an another officer.

4. Learned counsel for the respondents No.4 to 6 has not been able to dispute the said factual assistance.

5. Learned Senior counsel appearing on behalf of the private respondent No.7 also concede the said factual aspect.

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

7. Though in the present petition the challenge to the impugned order has been raised on merits but keeping in view the fact that the impugned order has been passed by violating the settled principle of law, as the personal hearing was given to the petitioner by a particular officer whereas the impugned order has been passed by another officer, the same is contrary to the settled principle of law settled in ***Prabh Dayal Gabha's*** case (supra) passed in '**CWP-357-2018**'. Relevant para of which, is as under:-

'In the present case, once it is an admitted fact that the personal hearing was given to the petitioner by respondent No.2 on 07.12.2007, it is expected that the punishment order will also be passed by the same authority/officer, who heard the delinquent. Once respondent No.2 had decided to grant personal hearing to the petitioner and the said opportunity was availed by the petitioner, passing an order by respondent No.1, who never heard the petitioner and didn't knew the aspects, which petitioner raised during the personal hearing. hence, passing of the impugned order by respondent No.1, is in violation of rules of natural justice. As per the rules of natural justice, only the officer, who heard the delinquent during the personal hearing, is to pass the required order. Even, if a the concerned officer, who had afforded the opportunity of personal hearing has been transferred, the successor-in-office needs to afford a fresh hearing to the delinquent so as to comply with the rules of natural justice. In the present case, the impugned order dated 18.07.2017 (Annexure P-4) was passed by respondent No.1 after a period of 10 years of the grant of personal hearing granted by respondent No.2, which even otherwise, is impermissible.'

Hence, the impugned order cannot be sustained as the

procedure adopted by the respondent so as to pass the impugned order (Annexure P-28) violates the rules of natural justice and is contrary to the law stated hereinbefore.

8. Consequently, the impugned order dated 08.09.2022 (Annexure P-28) is set aside with liberty to the respondents to pass a fresh order, in case the respondents intend to do so, after observing the rules of natural justice by giving due personal hearing to the petitioner as well as the private respondents so as to present their case before the authority concerned which is to decide about the eligibility of the petitioner in respect of the conditions mentioned in the advertisement qua the experience.

9. The writ petition is allowed in above terms.

10. Pending application being CM No.20747-CWP-2022 and CM-4224-CWP-2023, also stand disposed of as such.

09.08.2023

ps-I

(HARSIMRAN SINGH SETHI)

JUDGE

Whether reasoned/speaking?

Yes

Whether reportable?

No