IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2807-2014

Date of decision : 13.02.2023

Roshan Lal Sharma

.....Appellant

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kanwaljit Singh, Senior Advocate with
Ms. Gurdeep Kaur, Advocate for the appellant.

Mr. Gurvinder Singh, AAG, Punjab.

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HARSIMRAN SINGH SETHI, J. (ORAL)

The present Regular Second Appeal has been filed challenging the judgment of decree dated 23.05.2012 passed by the trial Court by which the suit filed by the appellant-plaintiff, wherein, he had challenged the order dated 03.11.2003 passed by the respondents by which one increment granted to him was withdrawn as well as order dated 27.04.2004 by which order, another financial increment in the salary was withdrawn, was dismissed as well as the judgment and decree of the lower Appellate Court dated 05.02.2014 by which the appeal filed by the appellant-plaintiff, was dismissed.

Certain facts need to be mentioned herein to analyze the controversy in the correct perspective. The appellant-plaintiff joined as a clerk with the Punjab Police Department on 01.03.1964 by way of transfer from the Irrigation Department where he was already working. While working

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in the Department of Police he was promoted to the Post of Assistant Grade 'B', however, he had foregone his promotion to the Post of Assistant Grade 'A' in the year 1982 and then again in the year 1985 due to which, the appellant-plaintiff was not extended the proficiency step up increment for which an employee become entitled for the stagnation.

Thereafter, the pay-scales were revised by the State of Punjab w.e.f. 01.01.1986 and the post of Assistant Grade 'A' as well as Assistant Grade 'B' Grade were amalgamated to be designated as Senior Assistant in the revised pay-scale of 1800-3200 w.e.f. 01.01.1986 As the appellant-plaintiff was already working as Assistant Grade 'B', and the said post had also been re-designated as Senior Assistant, the appellant was granted the pay-scale of 1800-3200, but after re-fixation of his salary, it transpired that the appellant-plaintiff was getting lesser salary than that of his juniors, namely, Sampuran Nath Bhalla and Sansar Chand. Keeping in view the fact that two employees who were juniors to the appellant were getting more salary than him, the claim of the appellant was accepted by the respondents so as to step-up his pay equivalent to that of his juniors and appropriate orders were passed on 19.06.1991 granting the said benefit and the pay of the appellant-plaintiff was brought at par with his juniors.

The petitioner was to attain the age of superannuation on 30.04.2004 and before the said date, the respondents, passed an order dated 03.11.2003 withdrawing one increment of the appellant-plaintiff which was granted to him so as to step-up the pay of the appellant equivalent to his juniors. Thereafter, the salary of the appellant was re-fixed vide order dated 27.04.2004 by withdrawing the said step-up, which orders were challenged by the appellant after his retirement by filing a civil suit.

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In the civil suit, the ground raised was that without giving any opportunity of hearing to the appellant, the benefit of step-up of pay granted to him was withdrawn which was contrary to the settled principle of law, apart from raising the grievance on the merits of the case with regard to the withdrawal of the increment and re-fixation of his salary. Keeping in view the evidence which came on record, the trial Court came to the conclusion that once the appellant had foregone his promotion, stepping-up of his pay equivalent to his juniors was not correct hence, the increment of step-up granted to the appellant was wrongly granted and rightly withdrawn subsequently by the respondents and the civil suit was dismissed vide order dated 23.05.2012. Against the said order of dismissal, the appellant preferred an appeal before the lower Appellate Court which was also dismissed. Hence, this present Regular Second Appeal.

Learned Senior Counsel appearing on behalf of the appellant has raised one argument that the withdrawal of the increment from the appellant by the impugned orders and re-fixation of his salary has been done without giving any opportunity of hearing, which is not permissible as, the withdrawal of the increment was done in the year 2003 i.e. after a period of approximately 11 years of the grant of increment benefit, hence, the said withdrawal of the benefits by the impugned orders dated 03.11.2003 and 27.04.2004 was contrary to the settled principle of law and the said orders passed by the respondents were liable to be set aside, which fact has totally been ignored by the Court below while dismissing the suit as well as appeal filed by the appellant-plaintiff.

Learned counsel for the respondents submits that once the benefit which was extended to the appellant was contrary to the facts and the rules

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governing the service regarding the said aspect, the said orders granting a benefit for the appellant-plaintiff was not eligible, being void, the benefit was rightly withdrawn and the judgment of the trial Court as well as the lower Appellate Court are as per the evidence which has come on record hence, the present Regular Second Appeal filed by the appellant is liable to the dismissed.

I have heard the learned counsel for the parties and with their assistance, have gone through the records of the case.

The only argument which needs to be addressed in the present Regular Second Appeal is whether, the grant of benefit of step-up of pay scale to the appellant equivalent to Sansar Chand could have been withdrawn by the respondents unilaterally while passing the order dated 31.10.2003 and the order dated 27.04.2004 so as to re-fix the salary. From the bare perusal of the order dated 27.04.2004, Ex.D-2, it is clear that the appellant was given a chance to represent to the respondents' office if he has any grievance qua the re-fixation of pay. This shows that prior to the passing of the said order, appellant-plaintiff was not given any opportunity rather, the appellant was being given a post decisional opportunity to represent qua the action of withdrawal of the increment as well as re-fixation of his salary. Whether, such an action is permissible or not, needs to be adjudicated keeping in view the settled principle of law.

It is a settled principle of law 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***

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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."*

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*

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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."

Keeping in view the law cited herein before, it is clear that no order can be passed unilateral by which causes civil consequences to an employee. In the present case, not only the pay of the appellant was being reduced but even the recovery was being ordered and the said reduction of pay would have further reduced the pensionary benefits permissible to the appellant, hence, it was incumbent upon the respondents to grant an opportunity of hearing to him before passing an adverse order, which was not done in the present case. Learned counsel for the respondents-Department has not been able to show any document which has come on record to show that any opportunity was given to the appellant to represent his case qua the withdrawal of the step-up increment and for re-fixation his salary keeping in the view the increment withdrawn. That being so, the Courts below have totally ignored the said aspect while dismissing the suit filed by the appellant-plaintiff as well as the appeal filed by him against the judgment and decree of

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the trial Court. Hence, the judgment of the trial Court dated 23.05.2012 cannot be sustained being contrary to the settled principle of law as the relevant facts have been ignored while recording the findings. The judgments of the Courts below being against the settled principle of law cited herein before, cannot sustain and are accordingly set aside.

As the impugned orders dated 03.11.2003 and 27.04.2004 were passed contrary to the settled principle of law, the case is remanded back to the respondent-Department to assess again and that too, after giving due opportunity to the appellant to present his case as to whether, the proposal of the Department to withdraw the step up increment is made out in view of the facts and circumstances of the present case or not. It is made clear that though the impugned orders have been set aside but the entitlement of the appellant for re-fixation of his salary will depend upon the fresh order which will be passed by the Department. In case, the Department comes to the conclusion that keeping in view the facts and circumstances of the case, the grant of step-up increment to the appellant in the year 1991 were in accordance with law, the due consequential benefit will also be given to the appellant as the orders of withdrawal of the increment dated 03.11.2003 and the re-fixation of salary dated 27.04.2004 were never in existence.

It is also made clear that in case, the respondents are of the view that the withdrawal of the step-up increment granted to the appellant in the year 1991 was perfectly valid and legal, and the salary of the appellant is liable to be re-fixed, the due reason will be given in the fresh order and that too, after taking into consideration the reply/objection of the appellant to the said proposal.

As the appellant has already retired about the 18 years ago, let the

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fresh order in terms of the present order be passed within a period of three months of the receipt of the order.

The present appeal stands allowed in above terms.

Let the decree be prepared in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

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

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