

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.34652 of 2019
Date of decision : 29.08.2023

Krishan Kumar

....Petitioner

Versus

State of Haryana and Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Manoj Chahal, Advocate for the petitioner.
Mr. Saurabh Mohunta, DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. Present petition has been filed challenging order dated 24.11.2017 (Annexure P-7) by which, after retirement, the date of regularization of the services of the petitioner has been changed from 09.05.1994 to 30.09.2003 and consequently, the date of promotion to the post of Assistant has been changed resulting into re-fixation of the salary of the petitioner, which is causing prejudice to him even qua the grant of pensionary benefits including pension.

As per the facts mentioned in the petition, the petitioner was appointed on the post of Clerk on 16.02.1994 on the recommendation by the Employment Exchange and after following due process as envisaged under law. After passing the type test, services of the petitioner was regularized within a period of three months of the joining i.e. on 09.05.1994. Thereafter, the petitioner was promoted as Assistant and he kept on working with the respondent-department without there being any objection and ultimately, the petitioner retired on 28.02.2017 on attaining the age of superannuation. After the retirement of the petitioner, the respondent passed impugned order dated 24.11.2017, copy of which has been appended as Annexure P7 by which the date

of regularization of the services of the petitioner has been changed from 09.05.1994 to 30.09.2003 and the consequent promotion to the post of Assistant given to the petitioner was also changed which led to reduction of the salary of the petitioner apart from the pensionary benefits including pension which was being drawn by the petitioner after the retirement. Vide the impugned order, the recovery was also ordered against the petitioner keeping in view the change in date of regularization of his services and consequent change in date of further promotion, which order is under challenge in the present petition.

3. Learned counsel for respondents concedes the factum that order dated 24.11.2017 which has been impugned in the present petition changing the date of regularization of the services of the petitioner was passed after the retirement of the petitioner but submits that the grant of benefit of regularization of services to the petitioner w.e.f. 09.05.1994 was wrong.

4. As per the reply filed by the respondents, once the date of regularization of the services of the petitioner as a Clerk stood changed from 09.05.1994 to 30.09.2003, the date of further promotion is also to be changed and even the salary has to be refixed.

5. Learned State counsel submits that the action of the respondents in passing the impugned order is perfectly valid as the petitioner was not entitled for regularization of his services w.e.f. 09.05.1994.

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

7. It may be noticed that the services of the petitioner were regularized w.e.f. 09.05.1994. The petitioner worked with the respondent-Department for a period more than twenty three years and even upto the date of his retirement, no objection was ever raised by the respondents qua the date of regularization of the

services of the petitioner w.e.f 09.05.1994. In the meantime, the petitioner was granted further promotion, keeping in view the date, when the services of the petitioner was regularized. That being so, the respondents could not have altered the date of regularization of his services after the petitioner had already retired. Once, no master-servant relationship survives between the respondents and petitioner, the respondents could not have passed the impugned order changing the date of regularization of the services of the the petitioner, which will affect him financially. Further, before passing the impugned order, not even a single notice was issued to the petitioner giving opportunity of being heard and unilateral action was taken by the respondents in altering the service record of the petitioner. Hence, the passing of the order is totally illegal and without any jurisdiction and the same cannot be sustained.

8. It is a 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 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.”

9. 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.”

10. Keeping in view the law cited hereinbefore, it is clear that no adverse order can be passed against an employee without giving any opportunity of hearing. The impugned order has not only been passed without following the rules of natural justice but without any valid justification and that too after retirement of the petitioner. Hence, the present petition is allowed and the impugned order dated 24.11.2017 (P.7) is set aside with the observation that the

date of regularization of the services of the petitioner will remain intact as 09.05.1994 for all intent and purposes.

11. In case, the pensionary benefits of the petitioner were re-fixed on the basis of impugned order to his detriment, the respondents are directed to recalculate the pensionary benefits of the petitioner by treating the date of regularization of the petitioner as 09.05.1994 instead of 30.09.2003 i.e by ignoring the order dated 24.11.2017 which has already been set aside and grant the arrears to the petitioner. Once it has become clear that impugned order passed by the respondents was without jurisdiction, the arrears, in case admissible to the petitioner, will also carry interest @6% p.a. from the date the same became due till its realization.

August 29, 2023
manoj

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : Yes