

204 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-2492-1994 (O&M)

Date of Decision: 15.02.2024

STATE OF PUNJAB AND OTHERS

...Appellants

Vs.

RAKESH CHANDER

...Respondent

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

Present: Mr. Rohit Ahuja, DAG, Punjab.  
None for the respondent.

HARSIMRAN SINGH SETHI, J. (Oral)

1. The present appeal has been filed challenging the judgment and decrees of the Courts below by the which, the suit filed by the respondent/plaintiff with regard to the recovery which was being done from the salary of the respondent/plaintiff vide order dated 01.02.1989 was decreed and the recovery held to be bad.

2. Learned counsel for the appellant argues that the Courts below have not considered the fact that once, the respondent/plaintiff has not passed the M.Phil examination, he was not entitled for increment keeping in view the notification dated 25.02.1977, hence, the findings recorded by the Courts below are not correct.

3. No one has appeared on behalf of the respondent/plaintiff. I have heard learned counsel for the appellant. It may be noticed that the respondent/plaintiff was already proceeded ex-parte.

4. The argument which is being raised by learned counsel for the appellants is that the respondent/plaintiff was not entitled for grant of increment as he has not done M.Phil as per the notification dated 25.02.1977, the same issue has already been dealt with by the Courts below to record the

finding that there was no condition in the appointment order that in order to get the increment, the petitioner has to get the M.Phil degree. Further, it has also come on record that while granting the approval to the appointment of the respondent/plaintiff, no such condition was put by the Vice Chancellor.

5. Learned counsel for the appellant has not been able to dispute the said finding. Once, there is no condition of passing of the M.Phil examination in order of appointment so as to get the increment, withdrawing the increment is totally arbitrary and illegal, which finding of the Courts below needs no interference by this Court.

6. Further, it has also come on record that as per the notification of the UGC issued in the year 1989, any appointment made prior to the notification dated 24.02.1989, there is no requirement of passing of the M.Phil examination for the grant of increment. The said finding of the Court has not been rebutted by the learned counsel for the appellant while arguing so as to prove that the said findings are perverse.

7. Even otherwise, the respondent/plaintiff was appointed in the year 1977 and the order withdrawing the increment was passed after a period of 12 years and that too without giving any opportunity of hearing, which is contrary to 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."*

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.”*

8. It may be noticed that as there was no interim order, the respondent/plaintiff has already retired from service since long. Keeping in view the above mentioned facts, no perversity in the findings have been pointed by the learned counsel for the appellant. No interference is called for with the findings recorded by the Courts below in allowing the suit.

9. The regular second appeal is dismissed.

15.02.2024

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(HARSIMRAN SINGH SETHI)  
(JUDGE)

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