



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(251)

CWP No. 9030 of 2021 (O&M)
Date of Decision : 02.09.2024

Gagandeep

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Arora, Advocate for the petitioner.

Mr. Swapan Shorey, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the order dated 17.03.2021 (Annexure P-12) by which the benefit of selection grade given to the petitioner vide order dated 01.07.2015 (Annexure P-11) has been withdrawn by the respondents and the recovery has been ordered.
2. Learned counsel for the petitioner submits that apart from the claim on merit, the benefit once extended by the respondents themselves could not have been withdrawn without giving any opportunity of hearing to the petitioner and in the present case, not even a show cause notice was issued before passing the impugned order dated 17.03.2021 (Annexure P-12) so as to withdraw the benefits extended to the petitioner vide order dated 01.07.2015 (Annexure P-11), which action of the respondents is arbitrary and illegal.



3. Learned counsel for the petitioner further submits that the benefit extended to the petitioner vide order dated 01.07.2015 (Annexure P-11) was in pursuance to the order passed by this Court in CWP No. 17953 of 2000 titled as ***Dr. K.K. Goyal and others Vs. The State of Punjab and another***, decided on 22.09.2008 and other connected cases, hence, even otherwise, the said benefit could not have been withdrawn and had the respondents given the petitioner a show cause notice before withdrawing the benefit of selection grade, all the objections to the proposal to withdraw the benefit extended to the petitioner vide order dated 01.07.2015 (Annexure P-11) would have been raised.

4. Learned counsel for the respondents submits that once, the benefit of ad-hoc service rendered could not have been given for fixation of salary, the benefit of selection grade has rightly been withdrawn.

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

6. It is a settled principle of law that no order causing prejudice to an employee can be passed without giving any opportunity of hearing, especially when the order passed causes financial prejudice to an employee. In the present case, the benefits which were extended to the petitioner vide order dated 01.07.2015 (Annexure P-11), have been withdrawn by the impugned order. By the impugned order, the salary of the petitioner has been re-fixed and recovery has been ordered. Once, the order dated 17.03.2021 (Annexure P-12) causes prejudice to the petitioner, the same could not have been passed without giving any opportunity of hearing to the petitioner.



7. 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 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.”

8. 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.”

9. Learned counsel for the respondents has not been able to show that any show cause notice was served upon the petitioner before passing the impugned order, hence, it can be safely presumed that impugned order has been passed by violating the principles of natural justice, hence, the impugned order dated 17.03.2021 (Annexure P-12) is set-aside.



- 10. The respondents in case, want to pursue the said issue so as to pass a fresh order, they should follow appropriate procedure as envisaged under law by giving due opportunity of hearing to the petitioner.
- 11. Accordingly, present petition is allowed in above terms.
- 12. Pending miscellaneous application, if any, also stands disposed of.

September 02, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No