

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

104

RSA-2769-1997 (O&M)
Decided on :24.01.2024

STATE OF HARYANA & OTHERS

.....Appellants

Versus

RADHE SHYAM

. . . Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Harish Nain, AAG, Haryana.

None for the respondent.

HARSIMRAN SINGH SETHI , J. (Oral)

1. The present regular second appeal has been filed against the judgment and decree dated 16.05.1997 passed by the Lower Appellate Court by which, the judgment and decree dated 13.01.1997 passed by the Trial Court has been set-aside and the suit filed by the respondent-plaintiff has been allowed.

2. Certain facts needs to be mentioned for correct appreciation of the issue in hand.

3. The respondent-plaintiff joined the Government of Haryana after being retired from the armed forces where he worked from 29.06.1963 to 10.12.1978 and also services rendered with the Government of Haryana and keeping in view the services rendered by the respondent-plaintiff, his pay was fixed. While fixing the pay of the respondent-plaintiff, the services rendered by him in the armed forces as well as on ad-hoc basis was taken

into account.

4. Without giving any opportunity of hearing to the respondent-plaintiff, the order fixing the pay of the respondent-plaintiff was withdrawn and the pay was reduced to the determinant of the respondent-plaintiff, which order was challenged before the Civil Court.

5. The trial Court keeping in view the facts and evidence which had come on record did not agree with the contentions raised by the respondent-plaintiff and the suit filed by him was dismissed vide judgment and decree dated 13.01.1997. Thereafter, the appeal was preferred by the respondent-plaintiff against the judgment and decree dated 13.01.1997, which came to be allowed by the Lower Appellate Court vide judgment and decree dated 16.05.1997, which judgment and decree has been challenged in the present regular second appeal.

6. It may be noticed that there was no interim order in the present regular second appeal, which is pending for the last 26 years before this Court.

7. Learned counsel for the appellant-State argues that the suit has been allowed by the Lower Appellate Court by reversing the judgment and decree passed by the trial Court only on the ground that before passing the order of the pay fixation, no opportunity of hearing was given to the respondent-plaintiff.

8. Learned counsel for the appellant-State submits that as the grant of the said benefit was contrary keeping in view the facts and circumstances of the present case, no opportunity of hearing was required to be given to the respondent-plaintiff hence, the suit filed by the respondent-plaintiff was rightly dismissed by the trial Court.

9. I have heard learned counsel for the parties and have gone

through the record with their able assistance.

10. It may be noticed that as per 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 where the salary of an employee is reduced, 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.”

11. Learned counsel for the appellant-State has not been able to distinguish the fact that as per the settled principle of law, the grant of opportunity of hearing before passing an order causing prejudice to an employee is must. That being so, the judgment and decree of the Lower Appellate Court cannot be said to be bad in law.

12. Further, it is also come on record in the judgment of the Lower Appellate Court where, the appellants-defendants have conceded the fact that no opportunity of personal hearing was given to the respondent-plaintiff. That being the conceded fact coupled with the settled principle of law, no interference is called for by this Court in the judgment and decree dated 16.05.1997 passed by the Lower Appellate Court allowing the suit so as to set-aside the re fixation of the salary of the respondent-plaintiff.

13. At this stage, learned counsel for the appellant-State submits that in case the order was being passed by the Lower appellate Court allowing the suit of the respondent-plaintiff on the ground of violation of the Rules of natural justice, the Lower Appellate Court should have remanded the case back to the authorities concerned for passing a fresh order after giving the due consideration to the Rules of natural justice.

14. Though there is a force in the said contention that the lower Appellate Court should have remanded the case back to the authorities concerned but now keeping in view the fact that the respondent-plaintiff started his service career in the armed force in the year 1963 and by now, he must be a senior citizen and has already retired from service since long and there is no interim order in the favour of the State, asking a retired

employee who must be in his late 70s, to participate in the proceedings so as to re-fix his salary cannot be allowed. The question of law that where the benefit is being granted by the Court on the basis that the Rules of natural justice have not been followed, the matter should normally be remanded back to the authorities concerned but in the present case keeping in view the facts and circumstances recorded herein above, the same benefit has not been extended to the State.

15. Keeping in view the facts and circumstances of the present case recorded herein above, no ground is made out for interference in the present case, hence the present regular second appeal stands **dismissed**.

16. Pending civil miscellaneous application, if any, shall also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

24.01.2024

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<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>