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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(219)**CWP-16740-2013****Date of Decision : August 06, 2024****Balwinder Singh****.. Petitioner**

Versus

State of Punjab and others**.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Vikas Singh, Advocate, for the petitioner.

Mr. Satnam Preet Singh, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the prayer of the petitioner is for setting aside the order dated 13.03.2012 (Annexure P-3) by which, the petitioner was dismissed from service as well as the order dated 20.01.2013 (Annexure P-6) by which, the appeal filed by the petitioner against the order of punishment, was dismissed.

2. Learned counsel for the petitioner submits that the order which has been passed in appeal dated 20.01.2013 (Annexure P-6), the same is totally cryptic and non-speaking and does not deal with any of the ground raised by the petitioner in his appeal and therefore, the same cannot be sustained in the eyes of law.



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3. Learned counsel for the respondents submits that once a detailed enquiry was conducted and order has been passed by the punishing authority, there is no requirement of passing the detailed order in the appeal and therefore, the prayer that the order passed is totally cryptic and non-speaking, is liable to be rejected.

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

5. It may be noticed that against the order of punishment, the employee raises several objections to the Appellate Authority. The Appellate Authority is bound to deal with all those objections by deciding the appeal filed by the employee concerned. In order to show that there is a due application of mind while deciding the appeal, the authority has to give reasons as to why, the appeal is dismissed or accepted so that the employee should know what weighed within the mind of the Appellate Authority while passing the order in appeal.

6. 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.457 of 1970 titled as Mahabir Prasad Santosh Kumar vs. State of U.P and others, decided on 02.04.1970***, the order in appeal should be speaking order so as to discuss every objection taken by the officer concerned against the order of punishment. Relevant paragraphs of the said judgment are as under:-

"5. The case discloses a disturbing state of affairs. The authorities have disclosed by their conduct a reckless disregard of the rights of the appellants. The order passed by the District Magistrate cancelling the licences was quasi-judicial; it could be made only on a consideration of the charges and the explanation given by the appellants. That

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necessarily implied that the District Magistrate had to give some reasons why he held the charges proved, and the explanation unacceptable. When the matter was carried in appeal, the State Government could at least have acted with some awareness that citizens have rights which must be protected against possible arbitrary action by subordinate officials. The District Magistrate is not made the final authority in cancelling the licence. The appellants had a right to carry on their business, and as they held a licence to carry on their business they could be deprived of their right by an executive order supported by good and adequate reasons. The relevant rules granted a right of appeal to the State Government against that order, and that implied that the aggrieved party must have an opportunity to convince the State Government that the order passed by District Magistrate was erroneous. That right could be effectively exercised if reasons be recorded by the District Magistrate and supplied to the aggrieved party. If the aggrieved party is not supplied the reasons, the right to appeal is an empty formality.

6. *From the materials on the record it cannot be determined as to who considered the appeal addressed to the State Government, and what was considered by the authority exercising power on behalf of the State Government. The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law. This Court had occasion to protest against this practice in several decisions : See Madhya Pradesh Industries Ltd. v. Union of India, (1966)1 SCR 466 (per Subba Rao, J.); Bhagat Raja v. Union of India, (1967)3 SCR 302; State of Madhya Pradesh v. Narsinghdas Jankidas Mehta, C.A. No. 681 of 1966, decided on 29-4-1969(SC); State of Gujarat v. Patel Raghav Nath, C.A. No. 723 of 1966, decided on 21-4-1969 and Prag Das Umar Vaishya v. Union India, C.A. No. 657 of 1965, decided on 17-8-1967 (SC). The power of the District*

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Magistrate was quasi-judicial : exercise of the power of the State Government was subject to the supervisory power of the High Court under Article 227 of the Constitution and of the appellate power of this Court under Article 136 of the Constitution. The High Court and this Court would be placed under a great disadvantage if no reasons are given, and the appeal is dismissed without recording and communicating any reasons".

7. In the present case, not even a single reason has been given by the Appellate Authority as to why, the appeal is being dismissed. Not only this, even the ground raised by the petitioner in the appeal has not been even adverted to while deciding the appeal.

8. A bare perusal of the order passed by the Appellate Authority reveals that the comments of the Officer were called for which have been taken into consideration but the same were never put to the petitioner for his comments before deciding the appeal, which also has caused prejudice to the petitioner.

9. Keeping in view the above mentioned facts coupled with the settled principle of law settled in ***Mahabir Prasad Santosh Kumar's case (supra)***, the impugned order 20.01.2013 (Annexure P-6) cannot be sustained in the eyes of law and is accordingly set aside. The case is remanded back to the Appellate Authority to pass a fresh order in accordance with law within a period of eight weeks of the receipt of copy of this order.

10. The present writ petition is disposed of in above terms.

August 06, 2024*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No



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Whether reportable

: Yes/No