

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

(209)

CWP-14965-2018

Date of Decision : January 25, 2024

Jawahar Lal Gupta**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. N.C. Kinra, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance which is being raised by the petitioner is that the petitioner was wrongly punished by alleging that he remained absent and the period in question was treated as leave of kind due so as to withhold the salary of the petitioner for the said period.

2. Learned counsel for the petitioner submits that against the order of punishment dated 28.08.2012/05.09.2012 (Annexure P-13), the petitioner filed an appeal before the authorities concerned but the same was dismissed vide order dated 22.12.2017, a copy of which has been appended with this petition as Annexure P-23 without giving any reason as to why, the appeal filed by the petitioner did not deserve merit.

3. Learned counsel for the petitioner argues that as per the settled principle of law, any appeal filed, is to be decided on merit by adverting to

the grounds taken by the employee concerned raising objections to the punishment imposed.

4. Learned State counsel has not been able to point out any reason given for dismissing the appeal of the petitioner. Learned State counsel submits that the punishment order was passed by the respondents keeping in view the entire record of the petitioner before the authorities concerned hence, the said order is liable to be upheld.

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 all the executive orders are to be reasoned. The executive authorities are required to give reasons for the conclusion arrived at so that the employee concerned should know as to what weighed within the mind of the authorities concerned either to accept or reject his/her claim. The said reasons are missing in the order dated 22.12.2017 (Annexure P-23) by which, the appeal filed by the petitioner with regard to treating the period of absence as a leave of kind due for the period in question. The authorities concerned were under an obligation to pass a detailed reasons while declining the appeal of the petitioner in case the objections raised by the petitioner were not meritorious enough to be accepted.

7. It is a settled principle of law as settled by the Hon'ble Supreme Court of India by passing an order in Civil Appeal No.457 of 1970 titled as '**Mahabir Prasad Santosh Kumar v. State of U.P. and others**', decided on 02.04.1970 wherein it has been held that every order passed by the authority concerned needs to be reasoned and speaking order. The relevant paragraph of said judgment of **Mahabir Prasad Santosh Kumar' case (Supra)** is 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 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 (perSubba 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 ofGujarat v. Patel Raghav Nath, C.A. No. 723 of 1966, decided on 21-4-1969 and Prag Das UmarVaishya v. Union India, C.A. No. 657 of 1965, decided on 17-8-1967 (SC). The power of the District Magistrate was quasi-judicial : exercise of the power of the State Government was subject tothe 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".

8. Keeping in view the above, the order dated 22.12.2017 (Annexure P-23) is set aside. The case is remanded back to respondent No.1 to pass a fresh order within a period of eight weeks from the receipt of certified copy of this order. It would be appreciated in case the authorities concerned accept the prayer of the petitioner for personal hearing so that everything can be explained in person.

9. The present writ petition is allowed in above terms.

January 25, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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