

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CWP-18160-2018 (O&M)
Date of Decision :14.02.2024

Faquir Chand

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Yagsimant Attri, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to order dated 31.10.2017 (Annexure P/13) by which, the prayer of the petitioner for the grant of revised pay scale has been declined by the respondents, on the ground that the said order is totally cryptic and non-speaking.

2. Learned counsel for the petitioner argues that order dated 31.10.2017 (Annexure P/13) passed by the respondents is totally cryptic and non-speaking order as no reason has been mentioned so as to decline the prayer of the petitioner hence, the said order needs to be set aside with direction to the respondent-State to pass a fresh order in accordance with law.

3. Learned counsel for the respondent-State submits that though claim of the petitioner has been declined by passing a cryptic and non-speaking order but the reasons for non-grant of said benefit to the petitioner have been mentioned in the reply filed by the respondents in the present petition and same may be treated as reply to the claim of the petitioner.

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

5. It is a settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.457-1970 titled as Mahabir Prasad Santosh Kumar vs. State of U.P. and others decided on 02.04.1970** wherein, it has been held that authorities being quasi judicial authority while passing an order of punishment, considering an appeal or revision has to decide the revision/appeal by passing a speaking order so that from the order, it could be transpired as to what weighted in the mind of the authority concerned to arrive at a particular conclusion so that the employee concerned should also decide to take appropriate remedy against the said order. Relevant paragraphs of the said judgment 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 a 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 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 the 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. 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 & Others](#)(1) (per Subba Rao, J.); [Bhagat Raja v. Union of India and Ors](#)(2); [State of Madhya Pradesh and Anr. v. Seth Narsinghdas Jankidas Mehta](#)(2). [The State of Gujarat v. Patel Raghav Natha and Ors](#).(4); and [Prag Das Umar Vaishya v. The Union of India and Ors](#).(5). The power of the District Magistrate was quasi-judicial : exercise of the power of the State Government was subject to the supervisory power of the High Court under [Art. 227](#) of the Constitution and of the appellate power of this Court under [Art. 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.”

6. Qua the assertion of the respondent-State that reasons given in the reply should be treated as reasons qua the impugned order, the same is not acceptable keeping in view the settled principle of law settled by Hon’ble Supreme Court of India in **Civil Appeal No.1297-1977 titled as Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others, decided on 02.12.1977**, wherein, it has been held that no department can supplement the reasons given in the impugned order by giving fresh reasons in the reply. Relevant paragraph of the judgment is

as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji

(1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older.”

7. Hence, keeping in view the settled principle of law, said assertion of the learned counsel for the respondents cannot be accepted.

8. Keeping in view the facts and circumstances recorded hereinbefore, order dated 31.10.2017 (Annexure P-13) passed by the authority concerned is set aside. Respondent-State is directed to pass a fresh order on the claim of the petitioner in accordance with law within a period of 08 weeks from the date of receipt of copy of this order.

9. Needless to say, whatever speaking order will be passed by the authority concerned, the same be conveyed to the petitioner.

10. Present petition stands disposed of in above terms.

February 14, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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