

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:062604

(222) CWP-25611-2018
Date of Decision : May 06, 2024

Munish Kumar .. Petitioner

Versus

State of Haryana and others .. Respondents

(222-A) CWP-25685-2018

Shankar Lal .. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.S. Mittal, Advocate, for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. By this common order, two writ petitions, the details of which have been given in the heading, are being disposed of as both the petitions involve the same question of law on similar facts. For the sake of convenience, facts are being taken from CWP No.25611 of 2018.
2. In the present writ petition, the challenge is to the order dated 29.07.2015 (Annexure P-6) by which, the benefit of regularization given to the petitioner vide order dated 13.08.1999 (Annexure P-1) regularizing the services of the petitioner w.e.f. 20.11.1985 has been withdrawn and the

petitioner has been directed to be regularized in service w.e.f. 01.10.1998.

3. Learned counsel for the petitioner submits that no reason has been given in the impugned order by which, the benefit of regularization has been withdrawn and nothing has come on record as to why, once the benefit of regularization of service was extended to the petitioner w.e.f. 20.11.1985, why the same needs to be withdrawn.

4. Learned counsel for the respondents, after going through the impugned order, has not been able to show any reason given for withdrawing the order dated 13.08.1999 (Annexure P-1) by which, the services of the petitioner were regularized w.e.f. 20.11.1985.

5. It is a 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*** that no order can be passed without giving reasons for passing the said order. decided on 02.04.1970. 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 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 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".*

6. Faced with this situation, learned counsel for the respondents submits that the order dated 29.07.2015 (Annexure P-6) may be treated as withdrawn with liberty to the respondent-Department to pass a fresh order by giving due reason as to why the petitioner is not entitled for regularization of his services w.e.f. 20.11.1985.

7. Learned counsel for the petitioner submits that as the impugned order has been withdrawn, the present writ petition has been rendered infructuous and the same may kindly be disposed of as such.

8. Ordered accordingly.

9. It may be noticed that as the respondents have undertaken to pass a fresh order, before passing the order, the petitioner be given an opportunity of personal hearing so as to explain his case.

10. Similar is the case of other petitioner in CWP No.25685 of 2018 where also the impugned order is alleged to be cryptic and non-speaking which order has also been withdrawn by the learned State counsel so as to pass a fresh speaking order.

11. Both the writ petitions are disposed of in above terms.

12. A photocopy of this order be placed on the file of other connected case.

May 06, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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