

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

236

CWP-19164-2023
Date of Decision: 05.02.2024

Suresh Kumar ...Petitioner(s)

Versus

State of Haryana and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.K. Malik, Senior Advocate with Mr. Kartikey Chaudhary,
Advocate for the petitioner

Mr. Parveen Mehta, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the order dated 01/03.08.2023, Annexure P-10 and 21/22.08.2023, Annexure P-11, vide which the benefit of *adhoc* service already granted to the petitioner for the purpose of increments was ordered to be withdrawn.

2. Learned senior counsel contends that the petitioner worked in the Technical Education Department, Haryana, as Lecturer in Mechanical Engineering on *adhoc* basis from 06.01.1996 to 26.07.2004. Later, he was appointed as Lecturer in Mechanical Engineering in the Department on regular basis, and joined as such on 06.03.2007. On his representation, the *adhoc* service was counted for the purpose of increments as per advice of the

Finance Department dated 28.10.2013, and the order granting the benefit was passed on 08/16.07.2014. However, after more than five years and without issuing any show cause notice or affording hearing to the petitioner, the said order was withdrawn vide orders dated 12.12.2019 and 23.12.2019, Annexures P-5 & P-6 respectively. These orders were challenged by him by filing Civil Writ Petition No.267 of 2020 before this Court. The petition was disposed of vide order dated 17.11.2022, Annexure P-7, by noticing that there was nothing on record to establish that any show cause notice was issued to the petitioner before passing the orders. Accordingly, the same were treated as withdrawn with liberty to the respondents to pass a fresh order after giving due opportunity of hearing to the petitioner.

3. In compliance thereof, the petitioner was granted personal hearing, vide memo dated 19.12.2022, Annexure P-8. However, no show cause notice or any other communication in that regard was sent to him before the personal hearing. The petitioner went for hearing, and requested the second respondent, vide letter dated 30.12.2022, to issue him a show cause notice for the purpose. Still, the notice was not issued and the impugned orders were passed.

4. Learned senior counsel further contends that despite the orders of this Court directing the respondents to afford due opportunity of hearing to the petitioner before passing the orders afresh, it has not been done. In the absence of show cause notice, the petitioner was not in a position to defend himself as he was not aware as to why the order, dated 08/16.07.2014, granting him the benefit of increments was sought to be withdrawn. The order is perfectly valid and has been passed in accordance with the rules/instructions

applicable at the relevant time. The impugned orders are, accordingly, not sustainable having been passed without affording due hearing.

5. Learned State counsel is not in a position to dispute that no show cause notice was issued to the petitioner before passing the impugned orders. He, however, contends that in terms of the order by this Court dated 17.11.2022, the petitioner was afforded an opportunity of personal hearing before passing the impugned orders, and the Principles of Natural Justice have been complied with.

6. Heard.

7. Since the earlier orders, dated 12.12.2019 and 23.12.2019, had been passed without affording any opportunity of hearing to the petitioner, while disposing of his writ petition, CWP-267-2020, the respondents were specifically directed to afford due opportunity of hearing to him before taking any decision. Despite the directions, the second respondent failed to comply with the Principles of Natural Justice, and only called the petitioner for personal hearing without issuing any show cause notice, or explaining the reasons for which he is being called. To afford an effective hearing, it is required that the purpose for which the hearing is being afforded must be made known to the person concerned. A show cause notice has to disclose the proposed action as well as the reasons it is based upon. In its absence, the person would not be in a position to defend and explain his/her position. Empty personal hearing without an appropriate show cause notice cannot, therefore, be termed a compliance of the Principles of Natural Justice.

8. These Principles have been explained time and again by the Supreme Court, and a reference can be made to the following paragraph in judgment rendered in *Canara Bank and others v. Debasis Das and others*, (2003) 4 SCC 557, which is as under:

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. ...

9. In view thereof, the impugned orders, dated 01/03.08.2023 and 21/22.08.2023, are hereby set aside, directing the second respondent to issue an appropriate show cause notice giving reasons as to why the orders dated 08/16.07.2014 are being sought to be withdrawn, and only after considering

his reply thereto, a reasoned speaking order be passed within a period of eight weeks from receiving a certified copy of this order.

10. Further, the second respondent/officer concerned is directed to pay costs of ₹15,000 to the petitioner for not of adhering to the Principles of Natural Justice despite the direction by this Court.

(TRIBHUVAN DAHIYA)
JUDGE

05.02.2024
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>