

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

235

CWP-33086-2019
Date of Decision : 26.02.2024

Prof. Daljit SinghPetitioner

Versus

Guru Nanak Dev University Amritsar
through its RegistrarRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Inderpreet Singh, Advocate for
Mr. P.S. Khurana, Advocate for the petitioner.

Mr. Cyrus Chauhan, Advocate for
Mr. M.K. Dogra, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has invoked the jurisdiction of this Court under Articles 226/227 of the Constitution of India seeking a writ of certiorari for quashing of order/letter dated 04.10.2019 (Annexure P-6), whereby the claim of the petitioner for grant of annual increments from 09.05.2009 to 08.05.2012 has been declined and further seeking a writ of mandamus directing the respondent to grant the benefit of annual increments during the above-said period along with all consequential benefits and interest on the arrears.
2. Brief facts, as have been pleaded in the petition, are that the petitioner had joined on the post of Lecturer in the Department of Laws, Punjabi University, Patiala in year 1979. Thereafter, he was promoted to the post of Reader in the year 1992. In the year 1994-

CWP-33086-2019

2

1995, the respondent – University advertised the post of Professor of Law. The petitioner was selected and joined as such on 28.03.1995 and later on, regularised on the post of Professor w.e.f. 29.03.1996. The petitioner remained on deputation to Khalsa College, Amritsar as Principal from May, 2005 to May, 2009 and on extraordinary leave without pay from 09.05.2009 to 08.05.2012 till the date of his retirement. The petitioner was voluntarily retired on 08.05.2012.

3. Prior to filing of the present petition, the petitioner had approached this Court by way of filing of CWP No.3712 of 2016 to count the services rendered by him in Punjabi University, Patiala from 24.04.1979 till 27.03.1995, as a qualifying service for the grant of pensionary benefits with a further prayer to grant him annual increments from 9.5.2009 till 8.5.2012 being on extraordinary leave keeping in view the provisions of Guru Nanak Dev University Statute. The said writ petition was finally disposed off by this Court on 5.2.2019.

Relevant paras of the said order thus read as under :-

“xx xx xx xx xx

Let the exercise be completed by Guru Nanak Dev University, Amritsar within a period of two months after the petitioner deposits the amount of Rs.59,125/- and grant him the benefits of the said service towards computing of the retiral benefits and the monetary benefits for which he becomes entitle for.

Apart from this, counsel for the petitioner states that the petitioner is entitled for the increment for the period from 09.05.2009 till 08.05.2012 as the case of the petitioner is covered under Statute Rule 83 of the Guru

Nanak Dev University Calender, which is reproduced hereunder.

“83. Extra-Ordinary Leave

(i) to (iv) XXXX XXXXXXXX

Counsel for the respondents very fairly conceded that in case the petitioner makes a request for the grant of the said benefit, the same will also be considered with open mind on the basis of the Rule reproduced above.

Counsel for the petitioner also relies upon the judgment passed by this Court in CWP No.5142 of 1989 decided on 19.09.2011 titled as Mohinder Singh Dhaliwal Vs. DPI, Punjab and others to contend that the petitioner is entitled for the increment.

The respondents shall take into consideration the said judgment while deciding the case of the petitioner and an appropriate order in this regard shall be passed by the competent authority in respect of the claim being made by the petitioner in respect of grant of interest.

In view of the above, no further orders are called for to be passed in the present writ petition.

The present writ petition stands disposed of in above terms.”

4. Since the petitioner did not receive any response from the respondent for the redressal of his grievance, he has served the notice of demand of justice dated 19.09.2019 on the respondents. In response thereto, respondent has passed the impugned order dated 4.10.2019 whereby his claim for grant of annual increments during the extraordinary leave from 9.5.2009 to 8.5.2012 has been declined by way of passing of non-speaking order. Hence, this petition.

CWP-33086-2019

4

5. While issuing notice of motion on 03.02.2020, the following contentions were recorded :-

“Counsel for the petitioner states that the claim of the petitioner for the grant of interest has been rejected by the respondents vide order dated 04.10.2019 (Annexure P-6) and the said order is totally cryptic and non-speaking as no reason has been given as to why the petitioner will not be entitled for the increment from 2009 till 2012, when the petitioner was on deputation as a Principal of the Khalsa College, Amritsar for which period, the petitioner was granted the extraordinary leave.

Counsel for the petitioner argues that keeping in view the provision of Rule 83 of the Guru Nanak Dev University Calender, the extraordinary leave, keeping in view the facts and circumstances of the present case, has to be taken into account for the grant of increment, which consideration has not been given by the respondents while passing the impugned order.

Notice of motion for 27.04.2020.”

6. Despite giving various opportunities, no reply has been filed by the respondent.

7. I have heard learned counsel for the parties and perused the relevant documents.

8. The impugned order dated 04.10.2019 (Annexure P-6) reads as under :-

“On the subject mentioned above, as per the orders of the competent authority, you are informed that according to the rules of the University, the benefit of annual increments

from 9.5.2009 to 8.5.2012 during the period of Extra Ordinary Leave, can not be granted.”

9. A perusal of the above order would show that no logical reasons have been given while rejecting the claim of the petitioner.

10. The respondent/University was under legal obligation to assign cogent reasons while passing the impugned order dated 04.10.2019 (Annexure P-6) so that this Court, while exercising its power of judicial review, may be in a position to know as to what were the reasons weighing in the mind of the University, while passing the impugned order. It is so said because the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Since the horizon of natural justice has been constantly expanding in the recent past, hardly any visible distinction is left in the functioning of the administrative and quasi-judicial bodies, so far as the necessity of recording the reasons is concerned. That is why reasons are called the soul of a judgment.

11. The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in ***Ram Phal Vs. State of Haryana : 2009(1) SCC (L&S) 645***. The relevant observations made by the Hon'ble Supreme Court in para 6 of the said judgment, which can be gainfully followed in the present case, read as under:-

“The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man's sense of justice and also a healthy discipline for all those who exercise power over

*others. This Court in **Raj Kishore Jha v. State of Bihar** has stated:*

19....Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.”

12. Again, while dealing with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice as well as recording reasons, the Hon'ble Supreme Court laid down the broad guidelines in this regard, in the case of **Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others : (2010) 9 SCC 496**. The relevant observations made in para 47 of the judgment, which aptly apply in the present case, read as under:-

“47. Summarizing the above discussion, this Court holds :

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor).

*(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See **Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford**, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".*

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the

decision is of the essence and is virtually a part of "due process".

13. Same view was held in judgment of Hon'ble the Supreme Court in ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others*** : **2009(4) SCC 240**. The relevant portion of said judgment is reproduced as under :-

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

*6. The view we are taking was also taken by this Court in **Divl. Forest Officer Vs. Madhusudhan Rao** (vide SCC para 20: JT para 19) and in **M.P. Industries Ltd. Vs. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. Vs. Union of India** (vide SCC para 6 : AIR para 6), etc.*

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

*8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in **S.N. Mukherjee Vs. Union of India**, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons,*

at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9. No doubt, in *S.N. Mukherjee case*, it has been observed that : (SCC p. 613, para 36)

“36. ... The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.

10. *For the same reason, the decision of this Court in **State of Madras Vs. A.R. Srinivasan** (vide AIR para 15) has also to be understood as explained by us above.*

11. *Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order.”*

14. Similar views have been observed in ***Ram Chander Vs. Union of India and others* : 1986(3) SCC 103, *Sengara Singh and others Vs. State of Punjab and others* : 1983(4) SCC 225, *State of U.P Vs. Raj Pal Singh* : 2002(1) SCT 205** as well as judgments of this Court in case ***Gulab Singh Vs. Maharshi Dayanand University, Rohtak and others* : 2005(1) PLR 440, *State of Punjab Vs. Pargat Singh through LRs* : 2004(3) RSJ 604, *Nafe Singh Vs. Haryana Land Reclamation and Development Corporation Ltd. and others* : 2016(1) SCT 212, *Pritam Singh Vs. Haryana State Electricity Board* : 1995(2) SCT 754 and *R.S. Bhatti vs State of Haryana* : 2001(2) SCT 1156.**

15. Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court and this Court, it is unhesitatingly held that since the impugned order dated 04.10.2019 (Annexure P-6) is cryptic and non-speaking, it cannot be sustained. The respondent/University has failed to discharge its legal obligation and acted in violation of the above-said guidelines laid down by the Hon'ble Supreme Court, therefore, impugned order is not sustainable in the eyes of law.

16. In view of the facts as mentioned above and law position as discussed, the impugned order dated 04.10.2019 (Annexure P-6) is set-aside and the matter is remanded back to the respondent/University for reconsideration on merits in view of the observations made hereinabove and pass necessary orders, in accordance with law, after giving personal hearing to the petitioner, within a period of 02 months from the date of receipt of certified copy of this order.

17. The present petition is disposed of in the above terms.

26.02.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No