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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-34295-2019
Date of decision: 16.07.2024

DR. ROSHAN LAL

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Kshitij Sharma, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Harsh Aggarwal, Advocate
for respondent No.4.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of an appropriate writ, order or direction in the nature of *mandamus* directing the respondents to release the pay and allowances to the petitioner at par with the pay of the Technical Advisor (Sugar), who was also appointed pursuant to the same selection process and further to direct the respondents to pay the pay band and grade pay to the petitioner as approved and resolved by the Board of Directors of respondent-SUGARFED in its meeting held on 28.08.2018 with a further prayer to quash the order dated 18.10.2019 (Annexure P-14) passed by the Managing Director of respondent-SUGARFED.

2. The main grievance of the petitioner is that he was appointed by the respondent-Haryana State Federation of Cooperative Sugar Mills Limited (SUGARFED) as a Cane Advisor and was granted the benefit of fixation of pay notionally at par with one Mr. A. K. Malik, Technical Advisor (Sugar) from the date of his joining by way of a Resolution of the Board of Directors in its 85th meeting held on 28.08.2018 and thereafter, the aforesaid benefit granted by the Board of Directors of the respondent-SUGARFED was abruptly withdrawn vide impugned order dated 18.10.2019 (Annexure P-14) by the Managing Director of the respondent-SUGARFED without issuance of any show cause notice or without affording any opportunity of hearing to him. The aforesaid impugned order dated 18.10.2019 (Annexure P-14) is under challenge in the present writ petition.

3. Learned counsel for the petitioner submitted that the Board of Directors, which is the Principal Executive Body of the respondent-SUGARFED has taken a conscious decision in its meeting to grant the benefit of fixation of pay notionally at par with aforesaid Mr. A. K. Malik, Technical Advisor (Sugar) to the petitioner, which was thereafter implemented by an order passed by the Managing Director of the respondent-SUGARFED vide Annexure P-10 on 08.11.2018, in which a specific order was passed that as per the decision of the Board of Directors, the pay of the petitioner is fixed notionally at par with Mr. A. K. Malik, Technical Advisor (Sugar) with effect from 10.08.2010 i.e. the date of his joining as Cane Advisor in the respondent-SUGARFED and actual fixation will be done at the same stage in applicable level, which was fixed on 09.03.2018 but the petitioner shall not be paid or

entitled to any arrears. He further submitted that despite the passing of the aforesaid Resolution by the Board of Directors being the Principal Executive Body and thereafter, a specific order passed by the Managing Director himself vide Annexure P-10, the aforesaid order was abruptly withdrawn by way of aforesaid impugned order Annexure P-14 on the basis of some decision of the State Government that such benefit cannot be granted. He further submitted that once a right has been vested in the petitioner and any action was proposed to be taken with regard to the withdrawal of some benefit granted and an order was required to be passed visiting with civil consequences, then the principle of natural justice, namely, *audi alteram partem* was required to be complied with but just with one stroke of pen the aforesaid impugned order has been passed by which the benefit which already stood granted to the petitioner has been withdrawn in clear violation of the principles of natural justice and is liable to be set aside on the aforesaid ground itself.

4. Learned counsel for the petitioner also submitted that the State Government had no role to play for the purpose of issuance of directions to the respondent-SUGARFED because the State Government had decided to withdraw the aforesaid benefit on the basis of the recommendations of the Finance Department, whereas the Principal Executive Body of the respondent-SUGARFED is the Board of Directors and therefore, the State Government through its Finance Department had no role to play.

5. On the other hand, learned counsel for respondent No.4-SUGARFED submitted that although the benefit was granted to the petitioner by way of a decision of the Board of Directors, which is undoubtedly the

Principal Executive Body and the aforesaid decision was also reflected in the order passed by the Managing Director of the respondent-SUGARFED vide Annexure P-10 but thereafter, when the matter was sent to the State Government then the State Government not only decided but also conveyed to the respondent-SUGARFED vide letter dated 27.09.2019 that the same benefit cannot be granted and therefore, respondent-SUGARFED had no option but to obey and comply with the directions of the State Government. He further submitted that the aforesaid was reason as to why no show cause notice was issued to the petitioner and no opportunity of hearing was granted to the petitioner because respondent-SUGARFED was acting on the basis of the directions issued by the State Government.

6. I have heard the learned counsels for the parties.

7. The only issue involved in the present case is that the petitioner after being granted the aforesaid benefit by way of a decision of the Board of Directors of the respondent-SUGARFED and later on again by passing of an order by the Managing Director of the respondent-SUGARFED vide Annexure P-10, wherein his pay was directed to be fixed notionally at par with Mr. A. K. Malik, Technical Advisor (Sugar), the same was abruptly withdrawn vide Annexure P-14 and admittedly without issuance of any show cause notice or without granting any kind of opportunity of hearing to the petitioner. The aforesaid action of the respondent-SUGARFED is *ex facie* violative of the principle of natural justice, namely, *audi alteram partem* and on this ground itself, it cannot sustain.

8. A submission has been made by the learned counsel for respondent No.4-SUGARFED that respondent-SUGARFED had no option but to withdraw the aforesaid benefit granted to the petitioner despite the fact that respondent-SUGARFED itself had granted the benefit because the State Government had directed it to do so is not sustainable in view of the fact that even if there was a direction from the State Government, then the order which was required to be considered for being withdrawn, for that at least notice should have been issued to the petitioner because it visited him with civil consequences and therefore, such a plea taken by the learned counsel for respondent No.4-SUGARFED is not sustainable.

9. Therefore, considering the aforesaid facts and circumstances of the present case especially in view of the fact that the learned counsel for respondent No.4-SUGARFED has stated that the respondent-SUGARFED is to act in accordance with the directions of the State Government, it will be just and proper to issue directions to the State Government in this regard.

10. In view of the aforesaid facts and circumstances, the present writ petition is partly allowed. The impugned order dated 18.10.2019 (Annexure P-14) is hereby set aside and quashed on the ground of violation of principles of natural justice. Respondent No.2-Additional Chief Secretary to the Government of Haryana, Department of Finance shall consider the aforesaid issue with regard to the claim of the petitioner seeking parity with the aforesaid Mr. A. K. Malik, Technical Advisor (Sugar) by fresh application of mind and after granting adequate opportunity of hearing to the petitioner by hearing him or his counsel. A well reasoned speaking order shall be passed by respondent No.2-

Additional Chief Secretary to the Government of Haryana, Department of Finance in accordance with law within a period of four months from today.

11. The petitioner shall also be at liberty to make any comprehensive representation to respondent No.2-Additional Chief Secretary to the Government of Haryana, Department of Finance within a period of 15 days from today by taking any ground which he deems is fit. Respondent No.2-Additional Chief Secretary to the Government of Haryana, Department of Finance shall pass a well reasoned speaking order on each and every ground which is taken by the petitioner within a period of aforesaid four months.

12. Till the time respondent No.2-Additional Chief Secretary to the Government of Haryana, Department of Finance passes any order, no recovery shall be effected from the petitioner.

(JASGURPREET SINGH PURI)
JUDGE

16.07.2024
Chetan Thakur

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