

**CM-20700-2024 in/and
CWP-29014-2017 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CM-20700-2024 in/and
CWP-29014-2017 (O&M)**

Date of Decision: January 30, 2025

Lakhwant Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

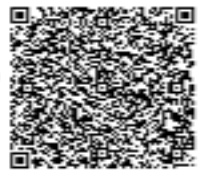
CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr. Vivek Sharma, Advocate
for the applicant-petitioner.

Mr. Solomon Partap Singh, AAG., Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)
CM-20700-CWP-2024

1. This is an application under Order 9 Rule 9 read with Section 151 CPC to recall the order dated 10.12.2024 (Annexure A-1) vide which the writ petition was dismissed for non-prosecution.
2. Notice of the application.
3. Mr. Solomon Partap Singh, AAG., Punjab accepts notice.
4. Keeping in view the facts mentioned in the application, which are duly supported by an affidavit, the order dated 10.12.2024 (Annexure A-1) vide which the writ petition was dismissed for non-prosecution is recalled and the writ petition is restored to its original status and number.



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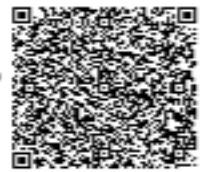
1. In the present petition grievance raised by the petitioner is that his pay has been re-fixed vide impugned order dated 29.12.2016 (Annexure P-5) and that too without giving him an opportunity of hearing, and the revised pay has been fixed to his prejudice and hence, the order dated 29.12.2016 (Annexure P-5) has been passed without following the rules of natural justice and thus, the same cannot be sustained.

2. Learned counsel for the respondents submits that pay of the petitioner was wrongly fixed and in order to correct the same w.e.f. 01.12.2011 the same has been fixed as, the petitioner was wrongly given the grade pay of Rs.2800/- instead of Rs.2400/-.

3. Learned counsel for the respondents has not been able to rebut the fact that the order dated 29.12.2016 (Annexure P-5) has been passed without giving any opportunity of hearing to the petitioner.

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

5. It is a settled principle of law that no order causing prejudice to an employee can be passed without giving an appropriate show cause notice and opportunity to rebut the proposal to the employee concerned especially when the same is going to cause financial prejudice to the said employee. In the present case, the pay

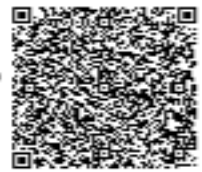


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of the petitioner has been reduced retrospectively from the year 2011 but without giving any opportunity of hearing which is arbitrary and illegal. The Hon'ble Supreme Court of India in Civil Appeal No. 2265 of 2011 titled as **Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others, 2016(12) SCC 204**, decided on 17.05.2016 and in **Civil Appeal No. 9417 of 2019** titled as **M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another 2019 (12) JT 283**, decided on 13.12.2019 that where any order passed by the authority concerned causes prejudice to an employee, especially financial liability, an opportunity of hearing is must and no order causing prejudice to an employee can be passed by an employer unilaterally. The relevant para of Daffodills Pharmaceuticals's case (supra) is as under:-

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too



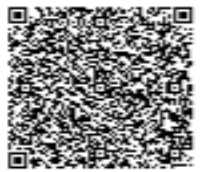
well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.

16. The High Court, in the opinion of this court, fell into error in holding that in matters of award of public contracts, the scope of inquiry in judicial review is limited. Granted, such jurisdiction is extremely circumscribed; no doubt the court had refused to grant relief to Daffodils against its plea of wrongful rejection of its tender. However, what the impugned judgment clearly overlooks is that the action of the state, not to procure indefinitely, on an assumption of complicity by Daffodils, was in flagrant violation of principles of natural justice.”

The relevant paragraph of the Chamoli's case (supra) is as under:-

“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen reported in (1964) 3 SCR 616 has laid down following:-

“... An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine



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witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the inquiry officer records his findings with reasons for the same in his report.”

6. Keeping in view the above mentioned settled principle of law, the order dated 29.12.2016 (Annexure P-5) passed by the respondents refixing the salary of the petitioner is arbitrary and illegal, and consequently the same is set aside. However, as the order is being set aside on technicality, the respondents are at liberty to pass a fresh order qua the fixation of the pay of the petitioner after giving him notice and keeping in consideration the rules of natural justice.

7. The writ petition is allowed.

**(HARSIMRAN SINGH SETHI)
JUDGE**

**January 30, 2025
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Whether speaking/reasoned	Yes
Whether Reportable	No