(2016) 09 AHC CK 0233

ALLAHABAD HIGH COURT

Case No: Writ A. No. 46710 of 2016.

Vijay Kumar Gupta - Petitioner @HASH State of U.P. And 5 Others — APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 27, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 10 ADJ 515 : (2016) 6 AllLJ 423 : (2016) 6 AllWC 6127 : (2017) LIC 210

Hon'ble Judges: Surya Prakash Kesarwani, J.

Bench: Single Bench

Advocate: Manoj Kumar Sharma, Advocate, for the Petitioner; C.S.C. and Qamrul Hasan Siddiqui, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

Surya Prakash Kesarwani, J. - Heard Sri Manoj Kumar Sharma, learned counsel for the petitioner, Sri Yatindra, learned standing counsel for respondent no.1 and Sri V.K. Rai, learned counsel for the respondent nos. 2 to 6.

2. This writ petition has been filed praying for the following relief:

(i) issue a writ, order or direction in the nature of certiorari to quash the impugned Punishment & Recovery Order dated 12.5.2016 passed by the Respondent no.5 against the petitioner, with its all consequential effects whatsoever throughout.

(ii) issue a writ, order or direction in the nature of certiorari to quash the impugned show cause notices dated 5.5.2012 and 12.6.2015 along with the punishment/recovery based thereupon vide orders dated 4.11.2015 and 19.11.2015 passed by the respondent nos. 2 and 3 respectively to the extent they are related

with the petitioner with its all consequential effects whatsoever throughout.

(iii) issue a writ, order of direction in the nature of mandamus commanding the respondents to make the payment of regular full monthly salary of the petitioner with all other admissible service benefits and refund the deducted amount of his salary also along with admissible Bank Rate Interest, to him.

(iv) issue a writ, order or direction in the nature of mandamus commanding to the respondent no.6 to decide the Revision/Representation within a short and specified period of time in a speaking manner by providing real opportunity of hearing to petitioner and communicate the order/result of Revision also to the petitioner at his residential address.

3. Learned counsel for the petitioner submits that neither the petitioner has any role in the purchase of three pumps in question nor he was member of the Purchase Committee nor he has any role in its installation or releasing the security money and yet without considering his reply and without assigning any reason the respondent no.2 has passed an order dated 4.11.2015 holding the petitioner liable for 50% of the alleged financial loss caused on account of purchase of the three pumps and the amount spent on its repair. He filed an appeal before the respondent no.5 who also decided the appeal in the same fashion without assigning any reason to hold the petitioner guilty of the alleged financial loss in purchase of pumps and also in fixing his liability to the extent of 1/3 cost of pumps. He submits that pursuant to the order dated 21.4.2016 passed in writ petition no.17851 of 2016, an interim protection for non recovery of the amount till decision in appeal was granted by the appellate-authority. He further submits that the order of the disciplinary authority as well as the order dated 12.5.2016 passed by the appellate authority both are totally non speaking and without application of mind. He submits that both the orders are wholly arbitrary and in fact indicative of non discharge of statutory duty by the authorities concerned.

4. Sri Vimlesh Kumar Rai, learned counsel for the respondent nos. 2 to 6 submits that petitioner has already filed revision before the respondent no.6 which may be directed to be decided in accordance with law at an early date.

5. I have carefully considered his submissions of learned counsel for the parties. The order dated 4.11.2015 passed by the disciplinary authority and the order dated 12.5.2016 passed by the appellate authority are reproduced below:

04-11-2015

''iz/kku dk;kZy;] mRrj izns''k ty fuxe] 6&jk.kk izrki ekxZ y[kum

i=kad&1857@007&2012&02&0166 (>kW0{ks0) fnukad 04-11-2015

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dk;kZy; vf/k"kklh vfHk;ark] ;wfulsQ izkstsDV ;wfuV fo0@;kW0] mRrj izns"k ty fuxe] dohZ (fp=dwV) esa twfu;j bathfu;j ds in ij inLFk dk;Zdky esa Jh oh0ds0 xqlrk] twfu;j bathfu;j }kjk vius drZO;ksa ,oa nkf;Roksa dk lR;fu"BkiwoZd leqfpr :i ls fuoZgu u djus] mPpkf/kdkfj;ksa ds vkns"kksa dh vogsyuk djus] tuin ckWank ds Hkwjkx<+ jk&okVj bUVsd osy gsrq0 eS0 vk:i bUVjizkbtst] y[kum ls rhu ux iEi l;a= dz; djus esa vfu;ferrk djus rFkk mRrj izns"k ljdkjh deZpkjh vkpj.k fu;ekoyh&1956 (;Fkkla"kksf/kr) ds fu;e&3(1) o 3(2) esa fufgr izkfo/kkuksa dk mYya?ku djus] foHkkx dh Nfo /kwfey djus vkfn ls lacaf/kr fuEukuqlkj rF;ksa ds izdk"k esa vkus ds QyLo:i mRrj izns"k ljdkjh lsod (vuq"kklu ,oa vihy) fu;ekoyh&1999 ds varxZr Jh oh0ds0 xqlrk] twfu;u bathfu;j dks bl dk;kZy; ds i=kad&957@007&2012& 02&0166 >kW0{ks0 fnukad 05-05-2012

}kjk dkj.k n"kZd uksfVl djrs gq, Li"Vhdj.k pkgk x;k FkkA mDr dkj.k n"kZd uksfVl ds lkis{k Jh oh0ds0 xqlrk] twfu;j bathfu;j us vius i= fnukad 15-07-2015 }kjk viuk Li"Vhdj.k izLrqr fd;kA izdj.k esa bl dk;kZy; ds i=kad&1652@007&2012&02&0166 (>kW0{ks0) fnukad 22-09-2015 }kjk eq[;k vfHk;ark (>kW0ds0)] mRrj izns"k ty fuxe] >kWlh ls mDr iEi la;=ksa ds lEcU/k esa v|ru fLFkfr dh lwpuk pkgh x;h Fkh] ftlds dze esa eq[; vfHk;ark (>kW0{ks0) mRrj izns"k ty fuxe] >kWlh }kjk vius i=kad&495@xks0;w0izks0;w0 fp=dwV@24 fnukad 03-10-2015 }kjk voxr djk;k x;k fd dz; fd;s x;s mDr rhuksa iEi LVksj esa vfdz;k"khy voLFkk esa j[ks gq, gSA

izdj.k esa mDr dkj.k n"kZd uksfVl ds lkis{k Jh oh0ds0 xqlrk] twfu;j bathfu;j }kjk izLrqr Li"Vhdj.k rFkk eq[; vfHk;ark >kW0{ks0] mRrj izns"k ty fuxe] >kWlh ds mijksDr i= fnukad 03-10-2015 }kjk izkIr lwpuk@v|ru fLFkfr ,oa vU; lqlaxr vfHkys[kksa@lk{;ksa ij fopkjksijkUr ;g fLFkfr ifjyf{kr gqbZ gS fd oh0ds0 xqlrk] twfu;j bathfu;j }kjk vius drZO;ksa ,oa nkf;Roksa dk fuoZgu djus esa foQy jgus ,oa foHkkx dks :0 15]30]000-00 yk[k dh gkfu igqapkus rFkk turk dks is;ty dk ykHk u feyus ds dkj.k foHkkx dh Nfo /kwfey gqbZ gS] ftlds fy, og nks"kh gSA

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mDr vkns"k dh izfr Jh0 oh0ds0 xqlrk] twfu;j bathfu;j dh pfj= iaftdk@O;fDrxr i=koyh esa j[kh tk;sxhA

g0 viBuh;

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eq[; vfHk;ark v&2&2

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g0 viBuh;

29-10-2015

(ih0ds0 flUgk)

eq[; vfHk;Urk (v&2&2)

12-05-2016

"iz/kku dk;kZy;] mRrj izns"k ty fuxe] 6&jk.k izrki ekxZ] y[kum

i=kad&881@007&2012&02&0166 (>kW0{ks0) fnukad 12-05-2016

dk;kZy; vf/k"kk"kh vfHk;ark] ;wfulsQ izkstsDV ;wfuV (fo0@;kW0)] mRrj izns"k ty fuxe] dohZ (fp=dwV) esa twfu;j bathfu;j ds in ij inLFk dk;Zdky esa Jh oh0ds0 xqlrk] twfu;j bathfu;j }kjk vius drZO;ksa ,oa nkf;Roksa dk lR;fu"BkiwoZd leqfpr :i ls fuoZgu u djus] mPpkf/kdkfj;ksa ds vkns"kksa dh vogsyuk djus] tuin ckWank ds Hkwjkx<+ jk&okVj bUVsd osy gsrq eS0 vk:i bUVjizkbtst] y[kum ls rhu ux iEi l;a= dz; djus esa vfu;ferrk djus rFkk mRrj izns"k ljdkjh deZpkjh vkpj.k fu;ekoyh&1956 (;Fkkla"kksf/kr) ds fu;e&3(1) o 3(2) esa fufgr izkfo/kkuksa dk mYya?ku djus] foHkkx dh Nfo /kwfey djus vkfn ls lacaf/kr izfrdwy rF;ksa ds izdk"k esa vkus ds QyLo:i tkWapksijkUr eq[; vfHk;ark (v&2&2)] mRrj izns"k ty fuxe] y[kum ds dk;kZy; vkns"k la[;k&1857@007&2012&02&0166 (>kW0{ks0) fnukad 04-11-2015 }kjk Jh oh0ds0 xqlrk] twfu;j bathfu;j dks ifjfufUnr djrs gq, bl izdj.k esa foHkkx dks gqbZ dqy vkfFkZd {kfr :0 15-30 yk[k ds 50 izfr"kr vFkkZr :0 7]65]000-00 yk[k dh olwyh ds vkns"k ikfjr fd;s x;s FksA

eq[; vfHk;ark (v&2&2)] mRrj izns"k ty fuxe] y[kum ds ikfjr vkns"k fnukad 04-11-2015 ds fo:) Jh oh0ds0 xqlrk twfu;j bathfu;j us vius i= fnukad 29-11-2015] 07-12-2015 ,oa 24-01-2016 }kjk vihy izLrqr dhA Jh oh0ds0 xqlrk] twfu;j bathfu;j }kjk izLrqr vihy esa mfYyf[kr rF;ksa ij eq[; vfHk;ark (>kW0{ks0)] mRrj izns"k ty fuxe] >kWalh ls izdj.k dh v|ru fLFkfr@izdj.k esa foHkkx dks gqbZ okLrfod {kfr dh lwpuk ekaxh x;h] tks muds i=kad&118@xksi0;w0izks0;w0 fp=dwV@11 fnukad 26-04-2016 }kjk izklr gqbZ] ftlesa voxr djk;k x;k fd iEi dks dz; fd;s tkus dh /kujkf"k :0 13-20 yk[k ,oa :0 2-10 yk[k dh /kujkf"k ;kstuk ls lEcfU/kr twfu;j bathfu;j }kjk iEi dh ejEer djkdj Bhd djkus esa O;; dh x;h ftlds fy, Jh oh0ds xqlrk] twfu;j bathfu;j mRrjnk;h ugha gS cfYd iEi dks dsz; djus okys lacaf/kr yksddehZ lkewfgd :i ls mRrjnk;h gSA

Jh oh0ds0 xqlrk] twfu;j bathfu;j us eq[; vfHk;ark v&2&2 y[kum ds ikfjr vkns"kksa ds fo:) ek0 mPp U;k;ky; bykgkckn esa ;kfpdk la[;k&17851@2016 ;ksftr dh] ftlesa ekuuh; mPp U;k;ky;] bykgkckn us vius fu.kZ; fnukad 21-04-2016 esa fuEukuqlkj vkns"k ikfjr fd;k x;k%&

In such view of the matter, this writ petition stands disposed off with a direction upon the appellate authority i.e. respondent no.5 to consider and decide petitioner''s prayer made in the appeal for grant of interim protection, within a period of two weeks from the date presentation of certified copy of this order. Appellate authority shall also make all endeavours to dispose off the petitioner''s appeal. Till the disposal of prayer for grant of interim protection or for a period of four weeks, whichever is earlier, no recovery shall be made from the petitioner.

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mDr vkns"k dh izfr Jh oh0ds0 xqlrk] twfu;j bathfu;j dh pfj= iaftdk@O;fDrxr i=koyh esa j[kh tk;sxhA

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6. Perusal of the order of the disciplinary authority dated 4.11.2015 and the order dated 12.5.2016 passed by the appellate authority prima facie shows that both the authorities have passed the orders in an irresponsible manner, in complete disregard to the mandatory provisions of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999 (hereinafter referred to as "the Rules") and without assigning any reason to hold the petitioner guilty. They have completely ignored the stand taken by the petitioner in his reply as well as in the appeal. Such action of the aforesaid authorities is nothing but an abuse of power which shakes confidence of the aggrieved employee. Their action is also indicative of violation of the statutory provisions under the Rules and the settled principles of natural justice.

7. This Court is constrained to make the above observation in the light of the clear disobedience by the disciplinary authority the provisions of Rule 10 of the Rules which mandates that the disciplinary authority shall, after considering the explanation, if any, and the relevant records, pass such order as he considers appropriate and when a penalty is imposed, reason thereof shall be given. Three important factors which are required in an order of the disciplinary authority under Rule 10 of the Rules, namely, consideration of the explanation, consideration of the relevant records and reasons for impositions of penalty do not prima facie appear in the order.

8. Rule 12 of the Rules mandates the appellate authority to pass such orders as mentioned in Clauses (a) to (d) of Rule 13 of these Rules, in the appeal as he thinks proper after considering:-

(a) Whether the facts on which the order was based have been established,

(b) Whether the facts established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate.

9. Perusal of the order of the appellate authority dated 12.5.2016 prima facie reveals that not a single word has been mentioned in it in terms of the mandate of Rule 12 of the Rules as afore noted. The order is apparently non speaking and contains no reason for conclusions and has been passed mechanically.

10. In the case of Omar Salay Mohd. Sait v. Commissioner of Income Tax, Madras, AIR 1959 SC 1238, Hon''ble Supreme Court held in para 42 as under :

"42. We are aware that the Income-tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in

regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this court."

(Emphasis supplied by me)

11. In the case of Udhav Das Kewat Ram v. CIT, 1967 (66) ITR 462, Hon''ble Supreme Court held that Tribunal must consider with due care all material facts and record its findings on all contentions raised before it and the relevant law.

12. An order without valid reasons cannot be sustained. To give reasons is the rule of natural justice. Highlighting this rule, Hon''ble Supreme Court held in the case of The Secretary & Curator, Victoria Memorial v. Howrah Ganatantrik Nagrik Samity and ors., JT 2010(2)SC 566 para 31 to 33 as under :

"31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind. " [Vide State of Orissa v. Dhaniram Luhar, (JT 2004(2) SC 172 and State of Rajasthan v. Sohan Lal & Ors., JT 2004 (5) SCC 338 : 2004 (5) SCC 573].

32. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha v. State of Bihar & Ors., AIR 2003 SC 4664; Vishnu Dev Sharma v. State of Uttar Pradesh & Ors., (2008) 3 SCC 172; Steel Authority of India Ltd. v. Sales Tax Officer, Rourkela I Circle & Ors., (2008) 9 SCC 407; State of Uttaranchal & Anr. v. Sunil Kumar Singh Negi, AIR 2008 SC 2026; U.P.S.R.T.C. v. Jagdish Prasad Gupta, AIR 2009 SC

2328; Ram Phal v. State of Haryana & Ors., (2009) 3 SCC 258; Mohammed Yusuf v. Faij Mohammad & Ors., (2009) 3 SCC 513; and State of Himachal Pradesh v. Sada Ram & Anr., (2009) 4 SCC 422].

33.Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected.

(Emphasis supplied by me)

13. Non recording of reasons, non consideration of admissible evidence or consideration of inadmissible evidence renders the order to be unsustainable. Hon''ble Supreme Court in the case of Chandana Impex Pvt. Ltd. v. Commissioner of Customs, New Delhi, 2011(269)E.L.T. 433 (S.C.)(para 8) held as under :

"8. Having bestowed our anxious consideration on the facts at hand, we are of the opinion that there is some merit in the submission of learned counsel for the appellant that while dealing with an appeal under Section 130 of the Act, the High Court should have examined each question formulated in the appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and given its reasons for holding that question is not a substantial question of law. It needs to be emphasised that every litigant, who approaches the court for relief is entitled to know the reason for acceptance or rejection of his prayer, particularly when either of the parties to the lis has a right of further appeal. Unless the litigant is made aware of the reasons which weighed with the court in denying him the relief prayed for, the remedy of appeal will not be meaningful. It is that reasoning, which can be subjected to examination at the higher forums. In State of Orissa v. Dhaniram Luhar this Court, while reiterating that reason is the heart beat of every conclusion and without the same, it becomes lifeless, observed thus :

"8.....Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made;....."

(Emphasis supplied by me)

14. In the case of CCT v. Shukla & Bros. (2010) 4 SCC 785 (paras 20, 24 to 27) Hon''ble Supreme Court held as under:

"20. A Bench of Bombay High Court in the case of M/s. Pipe Arts India (P) Ltd. v. Gangadhar Nathuji Golamare (2008)6 Mah LJ 280, wherein the Bench was concerned with an appeal against an order, where prayer for an interim relief was rejected without stating any reasons in a writ petition challenging the order of the Labour Court noticed, that legality, propriety and correctness of the order was challenged

on the ground that no reason was recorded by the learned Single Judge while rejecting the prayer and this has seriously prejudiced the interest of justice. After a detailed discussion on the subject, the Court held: (Mah LJ pp.283-87, paras 8,10 & 12-22)

"8. The Supreme Court and different High Courts have taken the view that it is always desirable to record reasons in support of the Government actions whether administrative or quasi-judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any order, particularly, the order which can be subject-matter of judicial review, is reasoned one. Even in the case of Chabungbambohal Singh v. Union of India 1995 Suppl (2) SCC 83, the Court held as under: (SCC pp. 85-86, para 8)

"8. ...His assessment was, however, recorded as "very good" whereas qua the appellant it had been stated "unfit". As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated "unfit", and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made."

* * *

10. In Jawahar Lal Singh v. Naresh Singh, (1987) 2 SCC 222, accepting the plea that absence of examination of reasons by the High Court on the basis of which the trial Court discarded prosecution evidence and recorded the finding of an acquittal in favour of all the accused was not appropriate, the Supreme Court held that the order should record reasons. Recording of proper reasons would be essential, so that the Appellate Court would have advantage of considering the considered opinion of the High Court on the reasons which had weighed with the trial Court.

In State of Punjab and Ors. v. Surinder Kumar, (1992) 1 SCC 489, while noticing the jurisdictional distinction between Article 142 and Article 226 of the Constitution of India, the Supreme Court stated that powers of the Supreme Court under Article 142 are much wider and the Supreme Court would pass orders to do complete justice. The Supreme Court further reiterated the principle with approval that the High Court has the jurisdiction to dismiss petitions or criminal revisions in limine or grant leave asked for by the petitioner but for adequate reasons which should be recorded in the order. The High Court may not pass cryptic order in relation to regularisation of service of the respondents in view of certain directions passed by the Supreme Court under Article 142 of the Constitution of India. Absence of reasoning did not find favour with the Supreme Court. The Supreme Court also stated the principle that powers of the High Court were circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the

basis of whims or subjective opinion varying from Judge to Judge.

13. In Hindustan Times Ltd. v. Union of India (1998) 2 SCC 242, the Supreme Court while dealing with the cases under the Labour Laws and Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 observed that even when the petition under Article 226 is dismissed in limini, it is expected of the High Court to pass a speaking order, may be briefly.

(emphasis supplied)

14. Consistent with the view expressed by the Supreme Court in the afore referred cases, in State of U.P. v. Battan and Ors.(2001) 10 SCC 607, the Supreme Court held as under:(SCC p.608, para 4)

''4.The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. ...The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the High Court order not sustainable."

15. Similar view was also taken by the Supreme Court in the case of Raj Kishore Jha v. State of Bihar and Ors. JT 2003 Supp(2) SC 354.

16. In a very recent judgment, the Supreme Court in State of Orissa v. Dhaniram Luhar (2004) 5 SCC 568 while dealing with the criminal appeal, insisted that the reasons in support of the decision was a cardinal principle and the High Court should record its reasons while disposing of the matter. The Court held as under: (SDC p. 572, para 8)

''8. Even in respect of administrative orders Lord Denning, M.R. In Breen v. Amalgamated Engg. Union, (1971)2 QB 175, observed:(QB p.191 C)

"The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

17. Following this very view, the Supreme Court in another very recent judgment delivered on 22-2-2008, in State of Rajasthan v. Rajendra Prasad Jain, (2008)15 SSC 711 stated that ''reason is the heartbeat of every conclusion, and without the same it becomes lifeless.''

18. Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the lis has a right of appeal and, therefore, it is essential for them to know the considered opinion of the Court to make the remedy of appeal meaningful. It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only desirable but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the Courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion. Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the Article, "The problem with the Courts: Black-robed Bureaucracy or Collegiality Under Challenge" 42 Md.L. Rev. 766, 782 (1983), observed as under:-

''My own guiding principle is that virtually every appellate decision requires some statement of reasons. The discipline of writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the Court that a bare signal of affirmance, dismissal, or reversal does not.''

19. The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation. Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:-

''When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public

understanding of how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid.''

20. The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinised by the Appellate Court. The reasons indicated by the Court could be accepted by the Appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on 13-9-2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said, ''The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written: -

(1) to clarify your own thoughts;

(2) to explain your decision to the parties;

(3) to communicate the reasons for the decision to the public; and (4) to provide reasons for an appeal Court to consider.''

22. Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120 (NIRC), the Court went to the extent of observing that ''Failure to give reasons amounts to denial of justice''. Reasons are really linchpin to administration of justice. They are the link between the mind of the decision-taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher courts but is even of great utility for providing public understanding of law and imposing self-discipline in the Judge as their discretion is controlled by

well-established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award.

The Court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various contentions were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals."

24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton''s Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the Courts to record reasons.

26. Our procedural law and the established practise, in fact, imposes unqualified obligation upon the Courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands

unequivocally settled by different judgments of this Court holding that, the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order 14, Rule 2 read with Order 20, Rule 1 of the Code of Civil Procedure requires that, the Court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the Court.

27. By practise adopted in all Courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree, 1974 ICR 120(NIRC), there are apt observations in this regard to say "failure to give reasons amounts to denial of justice". Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated herein above."

(Emphasis supplied by me)

15. The appellate authority is under the statutory obligation under Rule 12 of the Rules to consider with due care every fact for and against the delinquent employee and to record its finding in a manner which would clearly indicate as to whether the facts on which the order was passed have been established? Whether the facts so established afford sufficient ground for taking action? and whether penalty is excessive, adequate or inadequate? Absence of the findings to disclose reasons in an appellate order in the manner indicated above renders the order to be indefensible/unsustainable.

16. Reason is the heart beat of every conclusion. In the absence of reasons the order becomes lifeless. Non recording of reasons renders the order to be violative of principles of natural justice. Reasons ensures transparency and fairness in decision making. It enables litigant to know reasons for acceptance or rejection of his prayer. It is statutory requirement of natural justice under Rule 12 of the Rules Reasons are really linchpin to administration of justice. It is link between the mind of the decision taker and the controversy in question. Thus failure to give reasons amounts to denial of justice.

16-A. Afore noted observations have been made merely for the purpose that the concerned authorities should properly discharge their function entrusted to them by law.

17. The petitioner has already filed a revision which is pending and as such I do not feel it proper to pass any order at this stage on the merits of the case.

18. In view of the aforesaid and with the consent of learned counsel for the parties this writ petition is disposed of with the direction to the respondent no.6 to decide the revision of the petitioner strictly in accordance with law by a speaking and reasoned order within two months from the date of production of a certified copy of this order. Considering the peculiar facts of the case as afore noted and in the interest of justice it is provided that till the Revision is decided no recovery shall be made from the petitioner pursuant to the impugned orders.

19. Writ petition is disposed of.