

(2012) 07 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12721 of 2011

Union of India and Others

APPELLANT

Vs

Raj Kumar Chawala and Others

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 3 WLN 380

Hon'ble Judges : Sangeet Lodha, J;Arun Mishra, J

Bench : Division Bench

Advocate : Kamal Dave, for the Appellant;

Final Decision : Allowed

Judgement

Arun Mishra, C.J.—It is submitted by Mr. Kamal Dave, learned counsel appearing on behalf of the petitioner that controversy in question is covered by the order dt. 13.4.2012 passed in similar CWP No. 12749/2011. Following order was passed in this case-

This is a writ petition filed by respondents of O.A. No. 187/2011 under Article 227 of the Constitution of India against an order dt. 05.07.2011 passed by the Central Administrative Tribunal (for brevity hereinafter called Tribunal) passed in the aforementioned O.A.

By impugned order, the Tribunal allowed the O.A. of respondents herein in limine without issuing any notice to the respondents of the O.A. i.e. present writ petitioners.

So the question that arises for consideration in this writ petition is whether the Tribunal was justified in allowing the O.A. of the respondents in limine without issuing any notice of O.A. to the writ petitioners (respondents of O.A.).

Since the respondents herein have not entered appearance despite service to them and hence, it is not necessary to give any further notice of this writ petition.

The only submission of the learned counsel appearing for the writ petitioners was that the Tribunal erred in allowing the original application of the respondents at the admission stage itself without affording an opportunity of being heard to the writ petitioners. His submission was that in such a situation all that the Tribunal should have done was to issue notice to the writ petitioners and only after affording an opportunity to them and to file a counter, the matter could have been finally decided one way or the other.

We have perused the impugned order and find that the original application was allowed by the Tribunal without notice to the respondents of the O.A. i.e. Present petitioners. Since the impugned order resulted in issuance of writ of mandamus against the respondents (writ petitioners) may be of any nature, the writ petitioners were entitled for hearing before passing the impugned order.

We, however, do not wish to embark upon the merits of the controversy and are inclined to set aside the impugned order only on the ground that since it was passed behind the back of the respondents and hence not legally sustainable. It is a well settled principle of law that no man can be condemned unheard and no decision can be taken behind his back unless he is afforded an opportunity of being heard. This principle applies to the facts of this case in writ petitioners favour.

Resultantly, petition succeeds and is hereby allowed. The impugned order is set aside. The O.A. No. 187/2011 is restored to file of the Tribunal. The writ petitioners will appear before the Tribunal of their own and file return in answer to O.A. The Tribunal will then decide the original application on merits in accordance with law after affording an opportunity to both parties.

Writ petitioners to appear before the Tribunal on 30.04.2012 to enable the Tribunal to decide the case as observed supra.

The petition being similar, is disposed of in terms of the order passed by this Court in CWP No. 12749/2011. The impugned order is set aside. The Tribunal to decide the case afresh in accordance with law.

Stay application No. 21749/2011 is also disposed of.