

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

**C.W.P. No.10143 of 2000 (O&M)
Date of Decision : 08.05.2015**

A.K. Srivastva

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Parveen Chauhan, Advocate
for the petitioner.

Mr. Ashok Singh Chaudhary, Addl.A.G., Haryana.

Mr. Madan Pal, Advocate
and Mr. Sanjeev Sheoran, Advocate
for the respondents No.2 and 3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the order of dismissal passed against him and the appellate order rejecting his appeal.

The petitioner was working as Project Officer in Haryana Harijan Kalyan Nigam. On 23.12.1991 he was suspended from service and a charge-sheet was issued to him on 13.01.1992 (Annexure P-1). After regular inquiry, the inquiry officer held that charges No.1, 2 and 6 were proved but the petitioner could not be held solely responsible for them.

However, for charges No.3 and 5 he was held fully responsible. As regards charge No.4 the inquiry officer held that since no loss was caused a lenient view needs to be taken against him. Charge No.7 was held to be not proved. After the inquiry report a show cause notice was issued to the petitioner who gave a detailed reply with facts and figures.

The solitary argument raised by learned counsel for the petitioner is that the facts and figures mentioned by him in the reply to the show cause notice have neither been found to be wrong nor have been considered by the disciplinary authority or by the appellate authority.

I find that this is indeed so. No other argument has been raised by the learned counsel for the petitioner. I put it to the learned counsel for the respondents if he has any material even now which would illustrate that the facts were either incorrect or were considered, he is not in a position to show either of these things. In the circumstances, it has to be held that the impugned orders are illegal and liable to be set aside.

Learned counsel for the respondents No.2 and 3 have argued that even if the impugned orders are set aside yet an opportunity has to be granted to the respondents to now take action as per the Rules after forming the committee. In this connection he has relied upon the judgment of the Hon'ble Supreme Court in the matter of “*Chairman-cum-Managing Director, Coal India Limited and others versus Ananta Saha and others, 2011(5) SCC 142*” wherein their Lordships held as follows:-

“46. In *Managing Director, ECIL, Hyderabad etc. etc. v. B. Karunakar etc. etc., (Supra)*; and *Union of India v. Y.S. Sandhu, Ex. Inspector, AIR 2009 SC 161*, this

Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the inquiry afresh from the stage where it stood before alleged vulnerability surfaced. However, for the purpose of holding the fresh inquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages etc. is determined by the disciplinary authority in accordance with law after the fresh inquiry is concluded.

*47. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. Vide: **U.P.SRTC v. Mitthu Singh, AIR 2006 SCC 3018; Secy., Akola Taluka Education Society & Anr. v. Shivaji & Ors., (2007) 9 SCC 564; and Managing Director, Balasaheb Desai Sahakari S.K. Limited v. Kashinath Ganapati Kambale, (2009) 2 SCC 288).***

48. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh inquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled for subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs."

Having gone through the said judgment, I am of the considered view that the exposition of law made therein would apply to the present case. In the circumstances, the impugned orders are set aside. However, that can not mean that the petitioner will get full relief. The matter is remanded back to the disciplinary authority for fresh decision after considering the reply filed by the petitioner. Since a period of 16 years have already elapsed from the dismissal of the petitioner the disciplinary authority is directed to pass a final order within a period of 2 months from the date of receipt of a certified copy of this order. Needless to say that the petitioner would be given an opportunity of hearing. It is further made clear that in case a final order is not passed within the aforesaid period (subject to the petitioner cooperating with the disciplinary authority) the petitioner would be entitled to all consequential benefits of the order of dismissal having been set aside.

Petition stands disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 08, 2015

ashish

**(AJAY TEWARI)
JUDGE**