

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 17504 of 1996 (O&M)

Date of decision : July 24, 2015

Lal Chand Aggarwal (dead) through L.Rs

..... Petitioner

v.

The State of Haryana etc.

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Arun Bansal, Advocate
for the petitioner.

Ms. Shruti Goel, AAG Haryana

1. **Whether Reporters of Local Newspapers 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 writ petition, the petitioner has challenged the order dated 18.6.1996 (Annexure P-24), whereby he was removed from service.

Brief facts are that the petitioner was appointed as Temporary Overseer in the erstwhile State of joint Punjab and was ultimately working as Sub Divisional Officer in the year 1990. It is not disputed that w.e.f 5.11.1990, the petitioner virtually abandoned his job. It is his case that he was unwell but in two inquiries launched against him for willful absence, his plea of sickness was not accepted since he did not submit the medical certificate from a government hospital. Ultimately, by the impugned order, he was, as mentioned above, removed from service.

Counsel for the petitioner has argued that the Inquiring Authority as well as the Disciplinary Authority erred in not considering the fact that the petitioner was actually sick and was, therefore, prevented from rejoining due to the circumstances beyond his control.

In my opinion, this argument cannot be accepted. Even if the petitioner was not well, there was no obstruction in getting a certificate from the government hospital. No reason has been shown as to why such certificate could not be obtained from a government hospital. Consequently, the prayer of counsel for the petitioner to set aside the order of punishment is rejected.

Faced with this situation, counsel for the petitioner has raised an alternative argument. He has stated that even on 5.11.1990, when the petitioner originally proceeded on sanctioned leave, he had 32 years of service to his credit, and prior to that his record was satisfactory and while passing the impugned order, the Punishing Authority did not even consider that he was entitled to pensionary benefits from the date of his initial absence. He has relied upon State of Punjab and others v. Mohinder Singh (2005) 12 Supreme Court Cases 182 and Ex. HC Rajender Singh v. Union of India and others, 2008(2) All India Services Law Journal 35. In Mohinder Singh's case (supra), it was held as follows :-

“9. Counsel appearing for the respondent submitted that the order of dismissal may be converted into an order of compulsory retirement from service as the respondent has already put in more than 23 years of service. Counsel appearing for the appellants after taking instructions states that the case of the respondent would be considered sympathetically by the authorities if he moves an application for converting his order of dismissal into an order of compulsory retirement. Impugned orders are set aside. The authorities however shall be at liberty to

pass an appropriate order on the representation, if any, filed by the respondent for converting the order of dismissal into an order of compulsory retirement.”

In HC Rajender Singh's case (supra), it was held as follows :-

“..... The fact, however, remained that the petitioner had served for a long period and earned a valuable right to receive pension and other benefits for the rest of his life, which the petitioner would forfeit in case the punishment was, by way of dismissal. The Disciplinary, Appellate or Revisional Authorities do not appear to have kept in mind these aspects while directing dismissal of the petitioner. Dismissal from service of a person, who has not yet earned pension, may not be so harsh as is dismissal of one, who has already earned such a right. What makes the punishment unduly disproportionate and harsh is the forfeiture of rights which the delinquent has acquired by reason of his long service. Cutting short his tenure in the service may be one facet of the order of dismissal but more severe than that is the denial to him and his family sustenance for the rest of their lives. We are, therefore, of the considered opinion that the punishment by way of dismissal from service was, in the instant case, totally disproportionate to the gravity of the offence committed by the petitioner.”

Counsel for the respondents has argued that mere length of service can never be determinative in a disciplinary inquiry and just because a person has enough service to earn pension, does not mean that he cannot be dismissed or removed from service.

As a proposition of law, no body can have a quarrel with this argument. What counsel for the petitioner has stressed is that this aspect has not even been considered by the Punishing Authority. As regards the issue that the Punishing Authority was bound to consider this aspect, counsel for the respondents has not been able to cite any contrary judgment. In the circumstances, it has to be held that the order removing the petitioner from service without considering his entitlement for pension is illegal.

In Union of India and another vs S.S.Ahluwalia, 2007(7) SCC

257, the Hon'ble Supreme Court held as follows :-

“.... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty.....”

In normal circumstances, the matter would have been referred back to the Punishing Authority for a fresh decision after considering the service of the petitioner. However, it transpires that the petitioner has since died on 1.11.2000 and his L.Rs including his wife are on the record. In the circumstances, I deem it appropriate to convert the punishment of the petitioner from removal from service to compulsory retirement w.e.f 5.11.1990. Resultantly, the petitioner would be entitled to superannuation benefits till the date of his death i.e 1.11.2000 and thereafter the eligible legal representatives would be entitled to family pension etc.

This writ petition is disposed off in the above terms. The respondents are directed to work out the benefits and pay the same to the L.Rs of the petitioner within a period of four months from the date of receipt of a certified copy of this order, failing which they would be entitled to claim the same with interest @ 8% pa from the date/s the same fell due till the date of payment.

(AJAY TEWARI)
JUDGE

July 24, 2015
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