SAILESH RANJAN
2015.10.01 14:13
I attest to the accuracy and integrity of this document

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3195 of 2012
Decided on : 29.09.2015

Gian Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.R.K.Arora, Advocate, for the petitioner.

Mr.Pankaj Mulwani, DAG, Punjab.

******

G.S. Sandhawalia , J. (Oral)

Challenge in the present writ petition is to the order dated 31.12.2011 (Annexure P5) whereby the petitioner has been dismissed from service, with retrospective effect, from 30.06.2006, which is the date of his retirement. Further prayer is for issuance of direction to the respondents to release the petitioner's 100% provisional pension from the date of his retirement instead of 75%, which has been paid and to release the other retiral benefits.

The facts which would be necessary is that the petitioner was appointed as JBT Teacher in the year 1972. He was involved in a criminal case in FIR No.119 dated 23.10.2001 under Sections 323, 324, 198 & 199 IPC. However, during his service period, he was promoted as Head Teacher in the year 2005. He was chargesheeted departmentally on account of tampering with

SAILESH RANJAN
2015.10.01 14:13
I attest to the accuracy and
integrity of this document

the attendance register on 27.10.2005. He submitted his reply on 16.11.2005 and no further action was taken on the departmental side and he was allowed to retire on 30.06.2006 (Annexure P1). After 4 years, the conviction order was passed in the abovesaid FIR whereby he was sentenced for 2 years with a fine of ₹2000/-. Respondent No.2 dismissed the petitioner from service on two counts, regarding the allegation of tampering with the office record on the ground that it had been proved against him in the enquiry report and on account of the conviction w.e.f. 30.06.2006, in terms of Rule 5(viii) of the Punjab Civil Services (Punishment & Appeals) Rules, 1970. Resultantly, the present writ petition has been filed.

Specific averment has been made that on the departmental side, regarding the charge of tampering with the office record, no regular enquiry was conducted prior to his retirement. The said fact has not been denied; rather in para No.7 of the written statement, as noted in the impugned order, both the issues of criminal case and the charge of tampering with the school record, were taken together and it has been averred that no further enquiry was required, in view of the conviction. Nothing has been placed on record to show that any Enquiry Officer had been appointed and enquiry had been conducted. The two charges were totally separate; one of tampering with the record on which proceedings had been initiated on the departmental side, but not taken to its logical end and the FIR, in which conviction was

SAILESH RANJAN
2015.10.01 14:13
I attest to the accuracy and
integrity of this document

recorded, was on account of a quarrel, which was not connected with the petitioner's discharge of duties.

Even otherwise, it is settled principle that the dismissal of service, with retrospective effect, could not have been effected by the respondents, especially since there was no relationship of employee/employer. Reliance can be placed upon the judgment of this Court in ***Tarsem Singh Vs. The Punjab Scheduled Castes Land Development & Finance Corporation 2013 (2) SCT 342*** wherein it has been held that on account of no relationship of master and servant, the petitioner could not have been dismissed, with retrospective effect. The relevant portion of the judgment reads as under:

> "5. The facts, which are not in dispute are that the petitioner retired from service on 30.9.2008. No doubt, at that time, a criminal case was pending against him, in which he was convicted vide judgment dated 25.11.2010, passed by Sub Divisional Judicial Magistrate, Malout. As a consequence thereof, without issuing any show cause notice to the petitioner, he was dismissed from service vide order dated 21.1.2011 with retrospective effect from 30.9.2008, the date of his retirement. It is settled that an employee cannot be dismissed from service from retrospective effect. Regulation 44 of the Regulations though enables the competent authority to dismiss an employee on account of conviction in a criminal case for any offence involving moral turpitude, explanation to the aforesaid Regulation clearly provides that dismissal can be from a date when an employee is convicted. In the present case, admittedly the petitioner was convicted by the Sub Divisional Judicial Magistrate on 25.11.2010, which was

SAILESH RANJAN
2015.10.01 14:13
I attest to the accuracy and integrity of this document

> after the petitioner had already retired from service and there being no relationship of master and servant between the parties on that day, he could not be dismissed from service with retrospective effect. Accordingly, the impugned order dated 21.1.2011 (Annexure P-10) dismissing the petitioner from service is quashed.
>
> 6. Nothing has been pointed out to show that any amount is to be recovered from the petitioner on account of pecuniary loss caused to the Corporation.
>
> 7. In view of my aforesaid discussion, the writ petition is allowed. The respondent is directed to pay retiral dues of the petitioner within a period of three months from the date of receipt of a copy of the order, failing which the petitioner shall be entitled to interest on the delayed payment @ 7% per annum from the date of judgment till payment.
>
> Petition allowed."

The said judgment was upheld by the Division Bench in LPA No.164 of 2013 on 28.01.2013. A similar view has been taken by this Court in ***Bahadur Singh Vs. State of Punjab & others 2014 (2) RSJ 303***.

In such circumstances, the impugned order cannot sustain. The conviction had taken place after his retirement and therefore, there was no ground to dismiss the petitioner, as has been done. On the departmental side, no action had been taken to proceed by appointing an Enquiry Officer and thereafter, giving him an opportunity to show cause against the report. The order passed is totally arbitrary without following any proper procedure and cannot be sustained.

SAILESH RANJAN
2015.10.01 14:13
I attest to the accuracy and
integrity of this document

Accordingly, the present writ petition is allowed. The impugned order dated 31.12.2011 (Annexure P5) is quashed, with costs of ₹10,000/- imposed upon the respondents, with liberty to recover from the concerned official. The petitioner will be entitled to balance of his retiral benefits along with interest @ 10%, per annum, from the date it became due, till its realization.

(G.S. SANDHAWALIA)
JUDGE

SEPTEMBER 29, 2015
sailesh