IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15145 of 2011 (O&M)
Date of Decision: 22.01.2016

Sukhdev Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jatin Salwan, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

Mr. A.P.S. Sandhu, Advocate,
for respondent Nos.4 & 5.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner rose from a Gate Keeper to be a Superintendent in the respondent-Khalsa College for Women, Amritsar in the year 1996. He was charged with absence from duty without permission of leave since May 01, 2007 and for failure to make available necessary records/documents to the College authorities before his departure and in consequence of his sudden absence from work College administration was adversely affected. The charge levelled against him was that he failed to get six FDRs of the College renewed thereby causing financial loss towards interest on the investment. The Inquiry Officer held on evidence that the delinquent was prone to absence and indiscipline had become his way of life. He admitted absence without leave from May 01, 2007 to May 18, 2007. The attendance

register supported the finding recorded. It is found in the inquiry report that the petitioner admitted that the Principal has no ill-will or bias against him. They had no enmity of each other. In defence, illness was made an excuse to explain absence but he failed to produce any medical record to the Principal along with his leave application to support such a defence. He had exhausted all kinds of leave and no leave of the kind due was available to his credit when he is alleged that he sent the leave application to the Principal. The petitioner remained absent from duty from October 17, 2007.

2. The petitioner made a request for voluntary retirement on account of continued illness resorting to Ordinance 38 Sub Clause (3), page 59 Vol. IV of GNDU Calendar. As a result of the inquiry and the findings of guilt, the petitioner was proposed to be dismissed from service. Law required management to seek approval of its action in terms of the provisions under section 4, 6 and 7-A of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 ("1974 Act"). The management applied for permission which was a condition precedent to dismiss. The Director of Public Instruction (Colleges) Punjab declined permission in writing. Thus, the dismissal order could not be given effect to.

3. Aggrieved by rejection of request, and that the management could not give effect to the dismissal order approached the Education Tribunal, Punjab, Chandigarh in Appeal No.16 of 2008. By the time, the learned Tribunal decided the matter on February 18, 2010 the petitioner had crossed the age superannuation deemed from service on October 31, 2009. In these circumstances the learned Tribunal was constrained to hold that no adverse order could be passed against the petitioner retrospectively. Neither

was the Tribunal in a position to grant relief to the management due to passage of time. Therefore, the Tribunal devised relief by affirming the findings of the Inquiry Officer in favour of the management but nevertheless dismissed the appeal preferred by the College. But while the Tribunal did so, it declared that respondent No.2 - Sukhdev Singh, the present petitioner, shall be deemed to have retired from the service of the College w.e.f. October 31, 2009 AN., the date when he would have normally superannuated had he been in service without break. However, the declaratory relief was granted "with all consequential benefits including the retiral benefits" which would ordinarily bring him the relief.

4. Dissatisfied with the order of the learned Tribunal, the management carried CWP No.9911 of 2010 before this Court seeking a certiorari quashing the orders dated September 25, 2008 passed by the Director, Public Instructions (Colleges), Punjab and the order of the learned Education Tribunal, Punjab dated February 18, 2010. The learned Single Judge noticed the reason assigned by the DPI in declining permission when it had observed in its order that:-

> *" ... After perusal of the record and hearing both the sides, I am of the considered view that the enquiry report is logically weak and the penalty of dismissal of the employee as proposed by the College-authorities is not commensurate with the alleged charges against him. The proposal is rejected. I allow his compulsory retirement with all the consequential benefits dues to him...."*

5. The DPI being the competent authority under sub-section (3) of section 4 of the 1974 Act exercises jurisdiction to refuse to give approval to proposed dismissal from service if the same is found to be mala fide, by way

of victimization and not warranted by the facts and circumstances of the case. The competent authority was also competent to disagree with the quantum of punishment proposed by the management and to decide to impose an alternative punishment. The learned Single Judge in a detailed order dated July 19, 2010 dismissed the petition and upheld the order observing as under:-

> *"[11] In the case in hand, respondent No.3 had enjoyed spotless service career since the year 1977. As regard to the allegation of absence from duty, respondent No.3 has explained that he kept on visiting the College but was not permitted to mark his presence, has found favour with the D.P.I. (Colleges).*
>
> *[12] So far as causing of the loss of Rs.21,831/-, suffice it to say that respondent No.3 was not the Accountant and was not responsible for the affairs of the Accounts Branch. Be that as it may, the punishment of 'removal' or 'dismissal' from service for causing loss of Rs.21,831/- unless it is a case of embezzlement or mis-appropriation, is wholly unjustified in law as well as in equity.*
>
> *[13] The punishment recommended by the petitioner-Management, thus, gives some credence to the allegations made by respondent No.3 that he was being victimized at the hands of the Principal of the College due to some personal vendetta. It is pertinent to mention here that when the matter was pending consideration before the D.P.I. (Colleges), respondent No.3 offered to retire from service voluntarily but the petitioner-Management was hell bent to dismiss/remove him from service and did not agree to his request.*
>
> *[14] Since respondent No.3 continued in service in view of the orders passed by the D.P.I. (Colleges) till he retired from service on attaining the age of superannuation on 31.10.2009, the Tribunal has rightly held that no punishment can be imposed on respondent No.3 at this juncture and <u>consequently he was entitled to his retiral dues as per the Rules</u>."*

6. It is common ground that this order has attained finality. The petitioner is consequently, eminently entitled to retiral dues as awarded by the Education Tribunal subject to the rider in the partly quoted order dated July 19, 2010 (supra) passed by this Court that entitlement would be "as per the Rules".

7. Armed with both the favourable orders, the petitioner tried but was unable to get them executed in terms of money. He approached the Tribunal by filing application No.1 of 2011 praying for execution of accrued benefits arising out of the orders. The College Tribunal by its order dated January 20, 2011 held that it is not the proper forum to grant relief to the applicant in view of the statutory provisions contained in section 9-A of the 1974 Act which lays down the effect of non-compliance with orders or direction. The provision provides that if any Managing Committee fails to carry out any order of the College Tribunal or any direction of the Director Public Instructions issued under the 1974 Act, the State Government may take such action as it may think fit including stoppage of the grant-in-aid to the privately managed college. The Tribunal held that the provisions of Order 21 of the CPC have not been made applicable to the Education Tribunal. On the other hand, if there was violation of the order of the High Court, the applicant was free to approach the High Court to initiate contempt proceedings against the person responsible for implementation in the management. In short, the application was dismissed as not maintainable.

8. Having remained unsuccessful to secure his dues under the orders, the petitioner has approached this Court in the instant writ petition

praying for directions to the respondents to release the retiral benefits and other dues in terms of the orders of the Education Tribunal dated February 18, 2010 and the orders of this Court in the writ petition filed by the management. The amounts are claimed along with interest. The second prayer is for release of salary for the period March 2007 to September 2007 for which the petitioner on his showing had actually worked with the respondents. He has also claimed 50% DA/arrears, additional Dearness Allowance and revised pay scale w.e.f. January 01, 2006 along with 24% interest.

9. The management has contested the case by filing a written statement. They have taken various preliminary objections whereby they urge that the petition deserves dismissal as the management had not violated any rule, regulation or law. It is stated that the petitioner has been paid the Contributory Provident Fund to the tune of Rs.3,79,204/- vide banker's cheque dated May 17, 2011 duly credited to the accounts of the petitioner. Arrears of salary are not due by reason of absence from duty for the period claimed. Since the college is covered by 95% grant-in-aid scheme, the salaries of grant-in-aid employees is contributed to the tune of 95% by the DPI (Colleges), Punjab on behalf of the State Government the respondent college being a privately managed grant-in-aid college and, therefore, the liability of payment of disputed salary is the liability of the State Government to the extent of 95% and the management is liable to disburse the balance amount on receipt of grant-in-aid money.

10. It is, however, iterated by the management that as per their Rules, if an employee is absent from duty without leave he is not entitled to

salary for that period as that period is treated as leave without pay. Liability to pay 50% of the Dearness Allowance is admitted and the same is to the tune of Rs.31,433/-. This sum of money is sought to be set off against an amount of Rs. 49,326/- still owed by the petitioner to the College towards advances made at various stages and from time to time during the period of employment. After adjusting the two it is the petitioner who owes the management a sum of Rs.7,893/-. Revised pay scales would be admissible only after they are calculated w.e.f. January 01, 2006 and this exercise has to be done by respondent No.3 – DPI. The management says that gratuity is paid only to employees who are faithful to the College and is paid as per rules. The petitioner has filed an affidavit in CM No.14962 of 2014 as per Court directions depicting amounts due to him which have not been released. In the affidavit, the deponent certifies that he had rendered 32 years of service and his last paid drawn in the old pay scale was Rs.23,291/. He has applied the gratuity payment formula to compute a sum of Rs.3,72,656/- as amount of money owed to him by the respondent 4 & 5. As against this figure he has been paid gratuity amounting to Rs.1,35,675/-. The balance is due and payable. He asserts that threshold of death-cum-retirement gratuity in terms of money has been increased from Rs.3.5 lacs to Rs.10 lacs w.e.f. January 01, 2006 in terms of the notification of the State of Punjab dated September 02, 2009 which would apply to grant-in-aid colleges and is recoverable. He claims enhanced gratuity in the revised scale. In para.5 of his affidavit he discloses that leave encashment benefit has not been paid yet. The arrears of pay revision w.e.f. January 01, 2006 to October 31, 2009 are payable which is the date he would be deemed to have retired on superannuation. He has produced flow charts in tabulated form within the affidavit to impress upon payment due. In short he claims:-

> *"i) Arrears of revision of pay w.e.f. 01.01.2006 till 31.03.2007*
>
> *ii) Full Pay as per the revised pay scales w.e.f. 1.04.2007 to 31.10.2009 when he was retired. It deserves to mention that during this period nothing was paid to the petitioner.*
>
> *iii) Gratuity as per notification dated 2nd of Sep., 2009 in lieu of his 32 years of service (Till date no gratuity revised or pre-revised has been paid to the petitioner).*
>
> *iv) Full Leave encashment i.e. 300 days.*
>
> *v) Balance payment of contributory provident fund after calculating the same as per the definition of salary enumerated in University Calendar.*
>
> *vi) Interest on the delayed payments."*

11. On right to gratuity and leave encashment, the petitioner relies on several court decisions, the text of which has been placed at Annex P-6 and P-7 which is in the ruling delivered in LPA No.519 of 2011, *Anglo Sanskrit High School Khanna Trust and Management Society (Regd.) Khanna and another* v. *State of Punjab and others*, decided on April 05, 2011 and Single Bench decision in *Dr. Jagwant Singh and others* v. *Union of India and others* in CWP No.19904 of 2010 decided on August 08, 2012. The Court has taken the view that gratuity and leave encashment are to be paid by the management to the rightful owners. The Court noticed that financial crunch of the State Government cannot be a ground to deny payments in view of the law laid down in CWP No.10097 of 2000, *Sadhu Singh and 129 others* v. *State of Punjab and others* delivered on August 07, 2002.

12. On September 15, 2015 this Court passed an interim order

calling upon the 5th respondent to be present in Court on the next date of hearing i.e. on November 05, 2015 with a direction that if the arrears relating to retiral benefits which were pending consideration are not disbursed then appearance in person was necessary. In response, the Principal has filed and annexed documents R-4/11 to R-4/13 to show that payments mentioned therein have been released which is prior to August 15, 2015. The Principal of the college was not present in Court as directed. Neither were the amounts pending released. Hence it was again directed that the Principal would remain present in Court on the next date of hearing. The Principal is present in Court today. She has being heard through counsel on the main case together with material freshly listed CM No.11591 of 2015 which seeks to place on record documents Annex R/4-7 to R/4-10. The CM is allowed as prayed. Documents are taken on record.

13. Heard counsel for the parties at length and perused the paper-book with their help.

14. The outstanding claims depicted in petitioner's affidavit dated December 04, 2014 have been put in tabulation form which is as follows:-

	Gratuity	
1	*Last Pay drawn in Revised scale w.e.f. 01.01.2006.*	*Rs.21070+5689=26759.00*
2	*Prescribed Formula*	$\frac{26759x64}{4}=\frac{1712576}{4}=4,28,144/-$
3	*Gratuity Paid on 08.03.2014* *Delay in Payment 4 years months & 8 days.*	*Rs.1,35,675/-* *Rs.70,974/- by way of interest rate of interest not disclosed.*
4	*Balance of Gratuity*	*Rs.2,92,469/-*
5	*5.Interest @9% till 08.03.2014*	*Rs.1,99,840/-*

	Gratuity	
6	*Interest @ 9% till 31.01.2016*	*Rs.1,99,840 till 08.03.2014 Plus Rs.53,950/- till 31.01.2016 = 2,53,790/-* *This amount has been calculated after deducting Rs.1,35,675 which has been paid on 08.03.2014.*
7	*Balance of Interest @ 9%*	*Rs.2,53,790-70,974 (Paid on 22.01.2016 = 1,82,816/-*
8	*Balance amount of Gratuity Plus interest as on 31.01.2016*	*Rs.2,92,469+1,82,816=4,75,285/-*
	Provident Fund	
Rs.3,79,204 Paid on 10.01.2012 after a delay of 2 years and 3 months ***(NO INTEREST PAID).***		
	Pay	
Arrears of pay in revised pay scale i.e. w.e.f. 01.01.2006 till 28.02.2007 ***(The Day I was placed under suspension****).*		*Revised pay as per DPI Colleges is Rs.26,759/-* *Arrears Rs.82,278/-*
Complete Salary w.e.f. 01.03.2007 till 31.10.2009 (The Day I superannuated)		*Rs.9,26,674/-*
	Consolidated Claim	
1	*Balance of Gratuity*	*Rs.2,92,469/-*
2	*Interest on Gratuity*	*Rs.1,82,816/-*
3	*Arrears of pay in revised Scale w.e.f. 01.01.1986 to 28.02.2007*	*Rs.82,278/-*
4	*Complete salary w.e.f. 01.03.2007 till 30.10.2009 (When Superannuated)*	*Rs.9,26,674/-*
	(A) Total	***Rs. Rs.14,84,237/-***
Interest on Arrears of pay And complete salary (3&4 mentioned above) w.e.f. 01.11.2009 till 31.01.2016 @9%		*Rs.4,72,500/-*
	(B) Total	***Rs.4,72,500/-***
	Interest on Provident Fund	

Gratuity	
Payment of RS.3,79,204/- made on 10.01.2012 @9% (Delay 2 years 3 months 8 days)	*Rs.1,12,500/-*
(C) Total	*Rs.1,12,500/-*
Consolidated Claim	
A. Rs.14,84,237/- ***B. Rs.4,72,500/-*** ***C. Rs.1,12,500/-***	
Grand Total (A+B+C) Rs.20,69,237/- ***(Rupees Twenty Lac sixty nine thousand two hundred & thirty seven only)***	

Out of the total mentioned above Rs.2,21,742 which the respondents have paid to the petitioner vide cheque dated 12.09.2015 is to be deleted. After deletion the total will come to Rs.18,47,495/-.

15. In the considered view of this Court the claimed amounts have to be adjusted and disbursed by payment to the petitioner in terms of the operative parts of the orders of the Education Tribunal where the claims stand allowed "with all consequential benefits" including the retiral benefits which orders stand upheld by this Court in its order dated July 19, 2010 holding that the petitioner would be entitled to his retiral dues as per rules. The orders take effect from the date of superannuation i.e. October 31, 2009. As a consequence the petitioner would be deemed to have continued in service with the rejection of the request for approving the dismissal order which was turned down by the DPI (Colleges) Punjab. Therefore, by virtue of the directions of the Tribunal as affirmed by this Court, the petitioner would be entitled to the benefits tabulated above which fall to the liability of the State to the extent of 95% grant-in-aid and on the other hand, the benefits such as are declared by this Court in the Letters Patent Appeal etc. [gratuity and leave encashment] as falling due to be shouldered by the

management [R-4 & R-5] including the salary for the period falling due for the period March 2007 to September 2007.

16. However, in view of the large amounts of money involved and for the reason that the rights of the petitioner having had to be adjudicated on the construction of the orders of the Tribunal and this Court the petitioner is held entitled to the sums depicted in the tabulation without interest especially having regard to the fact that the management had sufficient evidence in support of the charges on the evidence produced before the Inquiry Officer that the petitioner was guilty of committing misconduct for willful absence from duty. The view of the DPI (Colleges) has not been approved when it held that the inquiry report was "logically weak". I may have acted differently on the case but the forensic debate has had to be narrowed down to the orders of the Court upholding the view of the Tribunal with relief moulded by the fiat accompli created by the petitioner crossing the age of superannuation before an adjudication on the merits of the case could take place. If a legal fiction has been created by court orders, which have attained finality, the fiction has to be taken to its logical conclusion. I can do no more than to execute express words of the decree of the Tribunal and this Court. If the retiral dues are to to be paid "as per Rules" in terms of the directions of this Court in its order dated July 19, 2010 the management has not shown any rules which may detract from the orders and deny the claim.

17. However, at the end of the day I am inclined to think that no premium deserves to be paid to the petitioner by award of interest on the huge amounts due which prayer is rejected on equitable considerations

should be declined to avoid harshness on an unsuspecting employer with long passage of time.

18. For the foregoing reasons recorded, this petition is accepted to the extent indicated above. It is declared that the financial burden would fall in the proportion and ratio of 95%:5% to be shared between the State and the respondent Management so far as State liability is concerned. The other benefits which are the exclusive liability of the management will be defrayed by it in terms of the case law noticed in paragraph 11supra and in terms of this order.

19. Costs will be borne by the parties.

(RAJIV NARAIN RAINA)
JUDGE

22.01.2016
manju