

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 18099 of 2011 (O/M)
Date of decision : 21.7.2016

Bahal Singh Petitioner (s)

Versus

State of Punjab and others Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.P.S. Sidhu, Advocate, for the petitioner.

Mr. R.S. Pathania, Deputy A.G. Punjab.

Mr. R.B. Gupta, Advocate, for respondents No. 2 and 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH J. (ORAL)

The petitioner had retired as Auction Recorder from the Martket Committee, Mansa. The petitioner has impugned the order dated 16.1.2004 (Annexure-P-1), passed by respondent No. 3 i.e. the Administrator, Market Committee, Mansa, and the order dated 25.11.2009 (Annexure-P-2), passed by respondent No. 1, disallowing the appeal of the petitioner. Undoubtedly, the petitioner, who was working as an Auction Recorder, had retired from the service on 30.6.2002. He had been suspended from service on 26.8.1985. An FIR No. 9 dated 7.1.1986 was registered under Sections 409/468/471 IPC against the petitioner at P.S. Mansa. In the said case, the petitioner was acquitted of the charges framed against him, vide judgment dated 14.8.1997 (Annexure-P-3), passed by the learned Chief Judicial Magistrate, Mansa. The petitioner re-joined the duty on 19.2.1998 during the pendency of the departmental inquiry. The

CWP No. 18099 of 2011 (O/M)

departmental inquiry was conducted, in which the petitioner was held guilty and order dated 9.8.2000 (Annexure-P-4) was passed. The relevant extract from the said order is reproduced as under :-

“ That after this case of employee Sh. Bahal Singh was analysed in detail and decision was made that one annual increment (for one year only) of Sh. Bahal Singh Auction Recorder was stopped temporarily and embezzled amount is ordered to be recovered and the decision was also taken that the period spent by employee under suspension should be treated as duty period for all benefits like pension, increment, gratuity etc.”

It comes out that after the imposition of said penalty, respondent No. 3 passed another order dated 16.1.2004 (Annexure-P-1) whereby in place of the earlier punishment awarded to the petitioner, the punishment was enhanced and in place of stoppage of one annual increment temporarily for one year, one annual increment was stopped with cumulative effect and the recoveries were ordered to be effected from his pensionary benefits. In the order dated 9.8.2000 (Annexure-P-4), the suspension period was ordered to be treated as duty period for all benefits like pension, increment, gratuity etc., but in the impugned order dated 16.1.2004 (Annexure-P-1), the suspension period was ordered to be forfeited and the same be treated as non duty for all purposes. The said order is reproduced below :-

“ That Shri Bahal Singh Auction Recorder Market Committee, Mansa, was given punishment for offence of embezzlement of cess fee market committee resolution No. 8 dated 9.8.2000 and that was given to employee by issuing official order letter No. 1451 dated 28.9.1999 but Joint Director (P) Mandi Board Chandigarh vide his letter No. A/P:6/G-

CWP No. 18099 of 2011 (O/M)

26/3596 dated 11.7.2003 to Market Committee Mansa held that this punishment was right according to Rules. So vide this letter after reconsidering Committee's Resolution No. 8 dated 9.8.2000, I G.P.S. Sahota, PCS/Administrator, Market Committee Mansa reconsidered the punishment given to the employee according to CSR V-I Part-I 7(3) and is passing the order of below mentioned punishment according to the Rule 14 of Punjab State Agricultural Marketing Board/Market Committee, Class-III Service Rules, 1988, which is as under :-

1. One annua increment of employee is stopped with cumulative effect and is ordered to be recovered from his pensionary benefits.
2. Suspension period of employee is (forfeited) treated as non duty for all purposes.

Sd/- Administrator
Market Committee.”

The petitioner has challenged the said order in appeal before the Secretary, Punjab Mandi Board, Chandigarh, who dismissed the appeal, vide order dated 25.11.2009 (Annexure-P-2).

I have heard the learned counsel for the petitioner, the learned State counsel, the learned counsel for respondents No. 2 and 3 and have also carefully gone through the file.

The short question arising for consideration is whether the punishment order once passed could be reviewed and enhanced punishment could be awarded as was done by respondent No. 2, that too after the retirement of the petitioner on 30.6.2002 ?

The learned counsel for respondents No. 2 and 3 has argued that the present petition is not maintainable as the revision could be filed under Section 42 of the Punjab Agriculture Marketing Board Act, 1961 before the State Government. The relevant Rules applicable to the

CWP No. 18099 of 2011 (O/M)

employees of the respondents are Punjab State Agricultural Marketing Service (Punishment and Appeal) Rules, 1988 (for short 'the Rules'). These rules provide for the departmental inquiry including imposition of major penalty. In the said rules, there is no provision for review of punishment once awarded and enhancement of the punishment after the retirement of an employee and that too without hearing him. Admittedly, even if there had been such provision, no order for enhancement of punishment could have been passed by the respondents after the retirement of an employee. In the absence of any provision, the order dated 16.1.2004 (Annexure-P-1) is patently illegal and arbitrary exercise of the powers by the Administrator, Market Committee, Mansa. The order of the appellate authority dated 25.11.2009 (Annexure-P-2) is also held to be illegal. Consequently, the said impugned orders dated 16.1.2004 and 25.11.2009 (Annexures-P-1 and P-2 respectively) are quashed. The petitioner is accordingly ordered to be granted revised pensionary benefits, ignoring the impugned orders, alongwith 9% per annum interest. The respondent No. 3 having passed patently illegal order is also burdened with costs of Rs. 50,000/-, payable to the petitioner. The respondents are directed to release the revised pensionary benefits to the petitioner within a period of three months from the date of receipt of copy of this order.

The present petition is accordingly allowed.

(KULDIP SINGH)
JUDGE

21.7.2016
sjks