

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13030 of 2013 (O&M)
Date of Decision: 21.04.2016

Lakha Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

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

Present: Mr. B.S. Patwalia, Advocate,
for the petitioner.

Mr. Rajinder Goel, Addl. AG, Punjab.

Mr. S.S. Behl, Advocate,'
for respondent No.2.

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

RAJIV NARAIN RAINA, J.

1. Synopsis filed by both sides are taken on record for the assistance of the Court.

2. Having heard the learned counsel for the parties at length and having been taken to visit the events which make up the case there appear to have arisen disputed questions of fact with respect to the date of birth of the petitioner as to whether it is May 07, 1955 or May 07, 1958. If his date of birth was in May 1958 the petitioner would still be in service retiring on May 31, 2016; which date is yet to come.

3. The facts briefly are: The petitioner was charge-sheeted on a complaint made by one Mr. Pritam Singh on January 28, 2013 raking up the date of birth issue. On April 18, 2013 an Inquiry Officer [B.R.Bansal, a

retired Judicial Officer] was appointed by the State Government from the panel of enquiry officers to conduct an enquiry against the petitioner on the charge of misconduct that he manipulated his date of birth while seeking employment in the Department of Welfare of Scheduled Castes and Backward Classes, Punjab. Pending inquiry, the petitioner was retired from service on May 31, 2013 on the assumption that his date of birth was May 07, 1955. The inquiry had not been concluded by the time the impugned retirement order [Annex P-5 page 62 of the paper-book] was issued against which the present writ petition has been filed praying that the order be set aside principally on the ground that the petitioner could not have been retired in service without concluding the enquiry with a finding of fact recorded in a regular inquiry with respect to his disputed date of birth.

4. It is argued by his learned counsel Mr. B.S. Patwalia that post decisional hearing is not sufficient safeguard which course if adopted would not meet the standards of providing natural justice in a case of alleged misconduct of seeking employment under an alleged fabricated matriculation certificate issued by the Punjab School Education Board. It transpires that after the petitioner was made to retire, an abortive inquiry was held by the same Enquiry Officer which turned out to be defective for want of fair and proper procedure followed in conducting enquiry. The conclusion that the first inquiry was defective is borne out by the fact that the second enquiry was conducted in which the petitioner was not associated and report submitted affirming what was held earlier in the first enquiry. This fact has been admitted by the learned counsel appearing for the State of Punjab. As a result, the second inquiry is also a defective one.

Since neither a fair nor proper inquiry has been held against the petitioner to establish guilt, if any, it will serve no purpose in writ jurisdiction to enter upon the dispute regarding date of birth being a pure question of fact to be determined on evidence adduced by the prosecution and defence which original record of the matriculation examination result lies with the respondent Punjab School Education Board, Mohali. The record would have to be evaluated by affording a reasonable opportunity to the petitioner to defend himself of the alleged misconduct.

5. It is well settled proposition of law that a defective or faulty inquiry is no enquiry in the eyes of law and has no substantive value to visit a delinquent with adverse orders which may tend to produce stigma on the person without fair hearing.

6. In these facts and circumstances, this Court is of opinion that both the inquiries are not sustainable in law and have to be set aside for want of following due process and affording a reasonable opportunity of hearing to the petitioner to defend himself and prove his innocence and acquit himself of the charge. The purpose of following the rules of natural justice is to prevent miscarriage of justice. These rules are available to domestic enquiries. Moreover, the test of prejudice is to be applied. In this case serious prejudice has been caused to the petitioner which cannot be cured by ex post facto enquiry or to treat repair and remedy as a useless formality because pre-decisional hearing possessed attributes and capability of altering the decision making process. Procedural fairness is part of rule of law. The “useless formality theory” or “empty formality” tests cannot be applied to the present case when petitioner was denied right to explain. For

applicability of these tests to fact situations; See Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519.

7. As a result of the above discussion, this writ petition is allowed in part. The inquiry reports at Annex R-2 & R-3 are set aside. Applying the principles in Managing Director ECIL v. B. Karunakar (II), 1994 SCC (L&S) 1009 the parties are returned to the stage where fault lies. Hence, the enquiry will be re-opened and re-conducted but by an Enquiry Officer other than the one who has held the defective inquiries. He will be replaced by an independent person as deemed fit by the Government. The enquiry would however not be outsourced through private person and instead a responsible officer of senior rank will be given the charge of conducting the enquiry fairly and impartially by picking up the threads of the fault-line since the reply to the charge-sheet stands filed by the petitioner. No further pleadings would be required. The enquiry will be conducted on a day-to-day basis in which the petitioner would participate without seeking unnecessary adjournment. The Board is directed to produce the entire original record before the Enquiry Officer on the first date demanded by the Enquiry Officer in writing. The responsibility to produce the record will rest jointly on the parent department and the Board.

8. The departmental proceedings will be concluded by May 23, 2016 and the report made will be made available to the disciplinary authority and the petitioner on the same day in view of paucity of time. In case, the report is adverse to the petitioner he will have opportunity to file a reply by May 26, 2016 which shall be considered by the competent authority in accordance with law and suitable orders passed on or before

May 30, 2016 i.e. one day short of the day when the petitioner would have superannuated on the basis of the date of birth entry recorded in service book/record maintained by the Government which indisputably is May 07, 1958. The period intervening May 31, 2013 till the present will be treated as deemed suspension and the effect of the impugned order dated May 31, 2013 will depend on the result of the enquiry. In case the petitioner succeeds on his claimed date of birth in 1958 he will be entitled to reinstatement with all pecuniary and non-pecuniary benefits from the date of passing of the impugned order of retirement till his retirement on superannuation including the arrears of salary. However, this order will not be taken as an expression of opinion of the Court on the dispute.

9. A copy of this order be given to parties attested by the Bench Secretary.

(RAJIV NARAIN RAINA)
JUDGE

21.04.2016
manju