IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 24140 of 2015
Date of decision: 10.02.2016

Madan Gopal ....Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

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

Present: Mr. Munish Jolly, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 30.09.2015 (Annexure P-18) whereby, the petitioner was denied the relief of extension of one year's service in view of the instructions dated 30.04.2015 (Annexure P-4) issued by the Finance Department. Accordingly, he was retired from government service on 30.09.2015. The reason for denial was that the petitioner was under the affect of the pending disciplinary proceedings under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (in short 'the Rules').

Initially, in view of the fact that a representation was pending, this Court, vide interim order dated 18.11.2015, had directed reconsideration of the issue. During the pendency of the writ petition, the Financial Commissioner (Revenue), vide order dated 15.12.2015, has also rejected the representation of the petitioner on the ground that the disciplinary proceedings under Rule 8 had been initiated on 31.08.2015 and that the decision for proceeding under Rule 10 for minor punishment was not taken on 29.09.2015 and it had been mis-stated by the petitioner in his representation. It is further held that it was only on 09.10.2015 that the petitioner was to be proceeded against under Rule 10 and not under Rule 8. Therefore, while placing reliance upon para no. 4 of the instructions dated 30.09.2015, the request for extension was rejected on the ground that where extension is not given and if after retirement, the employee is exonerated or given minor penalty, then the previous decision cannot be reviewed in view of Rule 3.26(a) of the Punjab Civil Services Volume I Part I as extension is neither necessary nor expedient in public interest.

Counsel for the petitioner has been at pains to explain that though the petitioner is under the control of the Financial Commissioner (Revenue), however, he is presently posted with the Department of Rural Development and Panchayats. Reference is accordingly made to Annexure P-17 to show that though on 31.08.2015, the Revenue and Rehabilitation Minister had directed that the petitioner should be charge sheeted for major penalty under Rule 8. Reference was also further made on the other hand to the notings dated 15.09.2015 (Annexure P-13) which were put before the Rural Development and Panchayat Minister whereby, decision was in favour of the petitioner that there was no need to issue a charge sheet under Rule 8 as there was no fault on his part in submission of the case to the higher authorities. However, the matter had been again put up before respondent no. 1 and on 24.09.2015 (Annexure P-14), respondent no. 1 had recommended that action against the petitioner be initiated only under Rule 10.

The petitioner is one of the delinquent officials whereas the major penalty was being recommended against other four officials who had delayed the handling of the case file. Counsel has also taken the Court through the contents of the said Annexure to show that a tabulation had been made whereby the petitioner, while being Superintendent, had only handled the file for two days on one occasion and for one day on another occasion whereas, in similar circumstances, other officials had kept the file for 4 months and 3 days, 1 month and 13 days, 3 months and 20 days and 6 days respectively. It is accordingly submitted that it was for valid reasons that the case of the petitioner was being distinguished as there was practically no delay on his part. Counsel has further pointed out that the petitioner had also approached the Revenue Minister on 01.10.2015 (Annexure P-19) and it was directed that the case should be put up with the concerned file. It is an admitted fact that the said case has not been put up before the minister concerned also.

Counsel for the State has taken the defence that on 24.09.2015, the matter could not be reviewed at the level of respondent no. 1 since a decision had already been taken at the level of the Government. However, as noticed above, there is a contrary decision of the Government also on the file on 15.09.2015 (Annexure P-13) that the petitioner should not be proceeded against under Rule 8.

The cumulative findings which, thus, necessarily have come on record are that it is not disputed that on the one hand, there has been two contrary recommendations that the petitioner need not to be proceeded against on 15.09.2015 whereas, there was a contrary view on 31.08.2015, which was again sought to be reconsidered on 24.09.2015. This was the reason of the passing of the interim order by this Court on 18.11.2015 and resultantly, the reasoned order has been passed.

In such circumstances, this Court is of the opinion that the petitioner has been gravely prejudiced as he has been made a shuttle cock between two departments. There is one view in his favour and the second view is against him and even after the said subsequent view, there was a reconsideration which was not put up before the appropriate authority, as noticed above and, therefore, on account of lack of decision, the order dated 30.09.2015 has been reiterated by the speaking order.

It is in such circumstances, this Court is of the opinion that the whole issue needs a re-look in a proper perspective. It would be appropriate if the petitioner is given an opportunity of hearing at the time of decision making.

Resultantly, this Court is of the opinion that both the orders dated 30.09.2015 (Annexure P-18) and subsequent speaking order dated 15.12.2015 deserve to be quashed and the writ petition is accordingly allowed. The respondent no. 1 shall reconsider the issue after putting it up before the appropriate authorities i.e. the Revenue Minister. As has already been noticed, the file had also been called for. Thereafter, a fresh consideration will be done on the request for extension. The needful be done within a period of six weeks from the date of receipt of certified copy of the order.

10.02.2016 (G.S. SANDHAWALIA)
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