IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2689 of 2014 (O/M)
Date of decision : 4.8.2016

Ajaib Singh .... Petitioner (s)

Versus

The Punjab Water Resources Management and Development Corporation Limited and others .... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

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

Mr. J.S. Puri, Advocate, for respondents.

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

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<u>KULDIP SINGH J. (ORAL)</u>

The petitioner was working as a Tubewell Operator in the Erstwhile Punjab State Tubewell Corporation Limited since 1.5.1983. It comes out that during his service, a Criminal Complaint No. 21 of 17.10.1997 was filed against him alongwith other aaccused, which was tried alongwith the State case. The learned Sub Divisional Judicial Magistrate, Malerkotla, vide judgment of conviction and order of sentence dated 12.1.2007 (Annexure-P-2), convicted him alongwith other accused under Sections 420, 467 and 468 IPC and accordingly sentenced him to undergo maximum rigorous imprisonment for three years alongwith fine. All the sentences were ordered to run concurrently. The appeal filed by the present petitioner alongwith other co-accused against their conviction was dismissed by the learned Additional Sessions Judge, Sangrur, vide judgment dated 23.5.2012 (Annexure-P-3). Accordingly, the present petitioner was arrested and committed to jail. However, later on, he filed criminal revision i.e. CR No. 1689 of 2012 before this Court, which is lying admitted. The petitioner was placed under suspension, vide order dated 28.6.2012 (Annexure-P-5). Later on, vide order dated 8.5.2013 (Annexure-P-1), he was reinstated in service and treated to have retired from service of the Corporation with effect from 31.1.2013 on attaining the age of 58 years. Admittedly, the job of the petitioner is not pensionable and only retiral dues payable are, gratuity, leave encashment etc. Now, respondent No. 2 has passed the order dated 16.12.2013 (Annexure-P-14) i.e. after the retirement of the petitioner, whereby on account of his conviction in a criminal case, while invoking Regulation 24 (a) (V) and (VIII) of the Service By Laws of the Corporation (in short 'the Bye Laws of the Corporation'), he was dismissed from service with effect from 12.1.2007, when he was convicted by the learned Sub Divisional Judicial Magistrate, Malerkotla.

The stand of the respondents is that once the petitioner is convicted, he could not be reinstated in service under the said regulation of the by laws of the Corporation.

I have heard the learned counsel for the petitioner, the learned counsel for respondents and have also carefully gone through the file.

The perusal of Rule 24 (a) of the Erstwhile Punjab State Tubewell Corporation Employees Service By Laws, 1977 (in short 'By Laws of 1977'), shows that it is applicable to the employees of the Corporation and the punishment mentioned therein can be awarded to the employee. However, once the petitioner retired from service, the relationship of employer and employee comes to an end and, therefore, no order could be passed under Rule 24 (a) of the said By Laws of 1977.

This Court is informed that regarding the provisions, on which the said by laws are silent, the Punjab Civil Services Rules are applicable. Under the Punjab Civil Services Rules, the provision to deal with such delinquent retired employee is provided under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-II, wherein for serious crime and grave misconduct, a cut in the pension can be imposed permanently or for a specified period and for the loss caused to the department, the recovery can be effected.

At the first instance, the punishment order itself is illegal and could not have been passed after his retirement from service, dismissing him from the date of his conviction.

The learned counsel for respondents has requested that the respondents may be allowed to proceed under Rule 2.2 (b) of the Punjab Civil Service Rules, Volume-II, Chapter-II.

I am of the view that the same may not be permissible. The present job is not pensionable, therefore, no cut in the pension is possible. Further, the petitioner was convicted on a private complaint and no pecuniary loss was caused to the Corporation. Therefore, for the obvious reason, no loss can be recovered from him. Therefore, it will also not be possible to proceed against him under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-II.

This Court, in the similar circumstances, has taken similar view in *Shiv Nath Versus State of Punjab and others,* (CWP No. 18512 of 2014, decided on 29.7.2016). The operative part of the order is reproduced as under :-

" The perusal of 2.2 (b) makes it clear that in case of pensioner, the departmental proceedings have to be initiated apparently to determine whether the misconduct is 'grave' or whether the crime of which he has been convicted, is 'serious'. It follows that without holding departmental proceedings, no order under Rule 2.2 (b) could be passed.

The perusal of the impugned order shows that no such departmental proceedings were conducted. Admittedly, after the conviction of the petitioner under Section 217 and 218 IPC, the pension file was moved and it remained pending. The opinion of the District Attorney Legal was also sought and ultimately the matter was decided on 17.03.2015 i.e. only after the retirement of the petitioner. At that time, the petitioner had already been retired from service on 31.01.2015 and as such the impugned order dated 17.03.2015 *(Annexure P-8)* being contrary to the provisions of Rule 2.2 (b) is hereby set aside."

It being so, the present writ petition is allowed. The impugned order dated 16.12.2013 (Annexure-P-14) is hereby set aside. The respondents are directed to release all the retiral benefits to the petitioner within one month from the date of receipt of copy of this order alongwith interest at the rate of 9%, starting three months from the date of retirement till the payment.

(KULDIP SINGH)
JUDGE

4.8.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes