

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 2868 of 2014

Date of decision 22.09.2016

JAGAN NATH

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Yesh Pal Malik, Advocate,
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana

KULDEEP SINGH, J. (ORAL)

By way of this writ petition, the petitioner has challenged the order dated 19/22.07.2013 (*Annexure P-3*) passed by respondent No. 3 whereby respondent No. 4 has been appointed as inquiry officer to conduct the inquiry against the petitioner, who retired from service on 30.06.2010, stating that it is in violation of the award dated 02.01.2013 (*Annexure P-2*) passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh.

Brief facts of the case which are required to be noticed for disposal of this case are that the petitioner was working as Bus Conductor with the respondent department since 22.10.1972. He retired from service on 30.06.2010 after attaining the age of superannuation.

It comes out that an inquiry was conducted against the petitioner during his service and a punishment order was passed in the year 1999. The petitioner challenged the said order before the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh by raising a demand notice under Sub-Section 10 of Section 11 of the Industrial Dispute (Amendment) Act, 2010 (for short "the Act"). The relevant extract of the order dated 02.01.2013

CWP No. 2868 of 2014

passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is reproduced as under: -

“ XXXXXX

In the light of findings on issues Nos. 1 and 2 above, punishment order dated 1st April, 1999 passed by the General Manager, order dated 5th October, 2001 passed by the Appellate Authority and order dated 29th July, 1999 passed by the General Manager against Shri. Jagar Nath, Conductr No. 106 are set aside. The workman is held entitled to fixation of pay/pension as if the impugned orders were not passed against him however he shall not be entitled to any arrears accruing before the date of demand notice that to 10th September, 2005. The award shall be given effect in case the management failed to start denovo inquiries against the workman within a period of 3 months from the date of this award. The relief granted to the workman shall be subject to the result of denovo inquiries if conducted against the workman. Appropriate Government be informed. Copy of this award be also sent to Learned District and Sessions Judge, Chandigarh in view of sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to the concerned Civil Court. File be consigned to the record room.”

According to the learned counsel for the petitioner, the inquiry was not initiated within reasonable period of three months ordered by the award of the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh, therefore, award of the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh was to be enforced. However, the department later on started the departmental proceedings by appointing the inquiry officer vide impugned order (*Annexure P-3*) dated 19/22.07.2013 after the retirement of the petitioner on 30.06.2010. It also comes out that vide order dated 17.02.2014 passed by this Court in the present writ petition, this Court directed that

CWP No. 2868 of 2014

inquiry proceedings may continue but no final order shall be passed by the punishing authority, on the basis of said inquiry proceedings.

The written statement of the respondent reveals that despite, the order passed by this Court, the inquiry continued and was decided and even punishment order dated 12.02.2015 (*Annexure R-2*) has been passed whereby the charges are dropped and for the suspension period only subsistence allowance was ordered to be given.

The stand of the respondent is that though de novo enquiry was conducted, but in compliance with the award of the labour court the pay of the petitioner was fixed by the office of the respondent vide order no. 289/ECC dated 24.02.2014 subject to result of de-novo inquiry. In the inquiry, the charges are proved but due to the fact that the petitioner remained deprived of the benefits for such a long period, the case was order to be filed.

I have heard learned counsel for both the parties and peruse the contents of the case file.

The above noted facts makes it clear that though vide impugned order dated 12.02.2015 (*Annexure R-2*), the inquiry has been filed, meaning thereby that the charges have been dropped, but the petitioner was held guilty and during the period of suspension, he was ordered to be entitled to the subsistence allowance. This court vide order dated 17.02.2014 had ordered that the inquiry can continue but final order shall not be passed. The order dated 12.02.2015 has been passed in violation of the said order and in the apparent contempt of the Court. However, as the charges against the petitioner have been dropped despite being proved, therefore, beneficial

CWP No. 2868 of 2014

provision of the order is maintained to the effect that the charges against the petitioner have been dropped and the penal part of the order that during the suspension period the petitioner was entitled for subsistence allowance only, is set aside and petitioner is held entitled to full wages for the said period.

The respondents shall take the departmental action against the officer/official, who passed the said order in violation of the order dated 17.02.2014 passed by this Court.

Learned counsel for the petitioner contended that the order of the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh has not been implemented in *toto*.

However, the stand of the respondent is that as per the stand taken in the written statement, the order of the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh has implemented.

In that circumstances, if the petitioner feels that the award of the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh has not been implemented in *toto*, it is always open to him to file execution before the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh for implementation of the said award.

The present petition is accordingly allowed/disposed of.

September 22, 2016

Suresh Kumar

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned

✓
Yes / No

Whether Reportable

✓
Yes / No